

## **CONSTRUCTION LOAN AGREEMENT**

Borrower: Houston Gateway  
Academy, Inc.  
Address: 7310 Bowie Street  
Houston, Texas 77012

Lenders: BOKF, NA dba Bank of Texas  
Address: 1401 McKinney Street, Suite 1000  
Houston, Texas 77010

Woodforest National Bank  
1330 Lake Robbins Drive, Suite 150  
The Woodlands, Texas 77380

THIS CONSTRUCTION LOAN AGREEMENT (this "Agreement") is dated November 18, 2016, by and among BOKF, NA dba Bank of Texas as administrative agent ("Administrative Agent"), lenders from time to time party hereunder (each a "Lender" and collectively "Lenders") and Borrower.

### **Article I**

#### **Definitions and Use of Terms**

1.01 Certain Definitions. As used herein, the following terms have the meanings indicated, unless the context otherwise requires:

"Administrative Agent" means BOKF, NA dba Bank of Texas in its capacity as contractual representative of Lenders pursuant to Article VII and not in its individual capacity as a Lender, and any successor Administrative Agent appointed pursuant to Article VII.

"Advance" means a disbursement by Administrative Agent of any of the proceeds of the Loans or Borrower's Deposit.

"Affidavit of Borrower" means a sworn affidavit of Borrower (and such other parties as Lenders may require) to the effect that all statements, invoices, bills, and other expenses incident to the acquisition of the Property and the construction of the Improvements incurred to a specified date, whether or not specified in the Approved Budget, have been paid in full, except for (a) amounts retained pursuant to a Construction Contract, and (b) items to be paid from the proceeds of an Advance then being requested or in another manner satisfactory to Administrative Agent.

"Affidavit of Commencement" means an affidavit to be executed by Borrower and Contractor complying with the provisions of §53.124 of the Texas Property Code.

"Affidavit of Completion" means an affidavit to be executed by Borrower complying with the provisions of §53.106 of the Texas Property Code.

"Aggregate Commitment" means the aggregate of the Commitments of all Lenders. As of the date of this Agreement, the Aggregate Commitment is \$24,000,000.

"Aggregate Outstanding Credit Exposure" means any time, the aggregate of the Outstanding Credit Exposure of all Lenders.

"Applicable Bankruptcy Law" means the United States Bankruptcy Code or any other present or future insolvency, bankruptcy, liquidation, conservatorship, reorganization or moratorium Governmental Requirement or other similar Governmental Requirements.

"Application for Advance" means a written application by Borrower (and such other parties as Administrative Agent may require) to Administrative Agent, on a form approved by Administrative Agent, specifying by name, current address, and amount all parties to whom Borrower is obligated for labor, materials, or services supplied for the construction of the Improvements and all other expenses incident to the Loan, the Property, and the construction of the Improvements, requesting an Advance for the payment of such items, containing, if requested by Administrative Agent, an Affidavit of Borrower, accompanied by such documents as Administrative Agent may reasonably request.

"Approved Budget" means a budget and cost itemization prepared by Borrower, and approved in writing by Administrative Agent, specifying the cost by item of (a) acquisition of the Land; (b) all labor, materials, and services necessary for the construction of the Improvements in accordance with the Plans, and all Governmental Requirements; and (c) all other expenses anticipated by Borrower incident to the Loan, the Property, and the construction of the Improvements. The Approved Budget is attached hereto as Exhibit D.

"Architect" means collectively, the architects, engineers, other professional consultants and planners, and firms set forth in Exhibit C, if any are therein named, together with any other person or entity with whom Borrower contracts for the providing of planning, design, architectural, engineering or other similar services relating to the Improvements, if any.

"Architect's Agreement" means a written agreement duly executed by Architect in favor of Administrative Agent (a) consenting to the assignment and encumbrance hereunder of the Plans and of Borrower's Rights in the Architectural Contract, if any; (b) agreeing to continue performance under the Architectural Contract, if any, at the request and for the benefit of Administrative Agent or its designee; (c) certifying that the Plans comply with all applicable Governmental Requirements (and have been approved) by all Governmental Authorities, and that the Improvements if constructed substantially in accordance with the Plans will have direct and free access (adequate for the intended uses of the Land and Improvements) to and connection with one or more dedicated public streets and thoroughfares and water, storm and sanitary sewer, gas, electric and telephone lines, pipes and services; (d) subordinating all liens, security interests and claims of Architect against the Property, Borrower and the Plans, to those of Lenders under the Loan Documents; and (e) addressing such other matters as Administrative Agent may require.

"Architectural Barrier Laws" means any and all architectural barrier laws, including the Fair Housing Act, the Americans with Disabilities Act of 1990, P.L. 101-336, the Architectural Barrier Act, 23 Tex. Rev. Civ. Stat. 9102, as amended, or any successor thereto.

"Architectural Contract" means a written agreement between Borrower and Architect for architectural services pertaining to construction of the Improvements.

"Arranger" means BOKF, NA dba Bank of Texas, and its successors, in its capacity as Lead Arranger and Sole Bookrunner.

"BOKF Note" means the Promissory Note made by Borrower payable to the order of BOKF, NA dba Bank of Texas in the maximum amount of and evidencing its Commitment, and any renewals, extensions, modifications, refinancing, consolidations and substitutions thereof.

"Borrower's Deposit" means such cash sums as Administrative Agent may reasonably deem necessary in accordance with Section 4.12 hereof.

"Business Day" means a day other than a Saturday, Sunday or a day on which commercial banks in the State of Texas, are authorized to be closed or are in fact are closed.

"Closing Date" means the Closing Date specified in Exhibit C.

"Code" means the Uniform Commercial Code of the State of Texas or of any other state having jurisdiction with respect to any of the Rights of Lenders under the Loan Documents.

"Commencement Date" means the Commencement Date specified in Exhibit C.

"Commitment" means for each Lender, the obligation of such Lender to make Loans to Borrower, in an amount not exceeding: (i) with respect to BOKF, NA dba Bank of Texas, sixty two and one half percent (62.5%) of the Loan Amount; and (ii) with respect to Woodforest National Bank, thirty seven and one half percent (37.5%) of the Loan Amount; as the same may be modified (1) as a result of any assignment that has become effective pursuant to Section 9.15(c), or (2) otherwise from time to time pursuant to the terms hereof.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Completion Date" means the Completion Date specified in Exhibit C.

"Construction Contract" means each agreement made by Borrower for construction of all or any part of the Improvements.

"Contractor" means each Person with whom Borrower makes a Construction Contract.

"Contractor's Agreement" means a written agreement duly executed by Contractor in favor of Administrative Agent (a) consenting to the assignment and encumbrance hereunder of the Construction Contract; (b) agreeing to continue performance under the Construction Contract at the request and for the benefit of Administrative Agent or its designee; (c) subordinating all liens, security interests and claims of Contractor against the Property or Borrower, to those of Lenders under the Loan Documents; and (d) addressing such other matters as Administrative Agent may require.

"Current Date" means a date within thirty (30) days prior to the Closing Date.

"Deed of Trusts" means (i) the Deed of Trust, Security Agreement - Financing Statement covering the Land and Improvements to secure payment and performance of the Obligation ("Construction Deed of Trust") and (ii) the Deed of Trust, Security Agreement - Financing Statement covering the property located at 3400 Evergreen Drive, Houston, Texas 77087 to secure payment and performance of the Obligation.

"Default" means any event or circumstance that constitutes an Event of Default set forth in Article V and in any other provision hereof using the term.

"Defaulting Lender" means, subject to Section 5.02(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or waived, or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified Borrower or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any debtor relief law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (other than an Undisclosed Administration), including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.02(b)) upon delivery of written notice of such determination by Administrative Agent to Borrower and each Lender.

"Excluded Swap Obligation" means: (a) with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) and (b) with respect to Borrower, any Swap Obligation of Borrower if, and to the extent that, all or a portion of the joint and several liability of Borrower with respect to, or the grant of Borrower of a security interest to secure, as applicable, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof), by virtue of such Guarantor's (in the case of (a)) or Borrower's (in the case of (b)) failure to constitute an "eligible contract participant," as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of such Guarantor, joint and several liability of Borrower, or grant of such security interest by such Guarantor or Borrower, as applicable, becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Swap Obligation, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Obligations for which such guarantee or security interest or joint and several liability, as applicable, is or becomes illegal.

"Eligible Assignee" means any Person except a natural Person, Borrower, any of Borrower's Affiliates or any Defaulting Lender or any of its subsidiaries; provided that such Person is in the business of making or purchasing commercial real estate loans similar to the Loans and has total assets in excess of \$1,000,000,000, calculated in accordance with the accounting principles prescribed by the regulatory authority applicable to such Person in its jurisdiction of organization.

"Excluded Taxes" means, in the case of each Lender or applicable Lending Installation and Administrative Agent, (i) Taxes imposed on its overall net income, franchise Taxes, and branch profits Taxes imposed on it, by the respective jurisdiction under the laws of which such Lender or Administrative Agent is incorporated or is organized or in which its principal executive office is located or, in the case of a Lender, in which such Lender's applicable Lending Installation is located, (ii) in the case of a Non-U.S. Lender, any withholding tax that is imposed on amounts payable to such Non-U.S. Lender pursuant to the laws in effect at the time such Non-U.S. Lender becomes a party to this Agreement or designates a new Lending Installation, except in each case to the extent that, pursuant to Section 2.17(a), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Installation, or is attributable to the Non-U.S. Lender's failure to comply with Section 2.17(f), and (iii) any U.S. federal withholding taxes imposed by FATCA.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (central time) on such day on such transactions received by Administrative Agent from three (3) federal funds brokers of recognized standing selected by Administrative Agent in its sole discretion.

"Financial Statements" means financial information of Borrower and of Guarantor, as set forth in Section 4.16 hereof, as, at the time in question, have been most recently furnished to Administrative Agent.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"GAAP" means generally accepted accounting principles in the United States set forth in the statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the United States, the state, the county, the city or any other political subdivision in which the Property is located, and any court or political subdivision, agency, or instrumentality having jurisdiction over Borrower, Guarantor or the Property, domestic or foreign.

"Governmental Requirements" means all constitutions, statutes, laws, ordinances, rules, regulations, orders, writs, injunctions or decrees including without limitation, Architectural Barrier Laws, of any Governmental Authority applicable to Borrower, Guarantor or the Property.

"Guarantee Obligation" means, as to any Person (the "guaranteeing person"), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing Person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. For the avoidance of doubt, for purposes of determining any Guarantee Obligations of any Guarantor pursuant to any security documents, the definition of "Specified Swap Agreement" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, if applicable) any Excluded Swap Obligation of such Guarantor.

"Guarantor" means, jointly and severally, the guarantors (whether one or more), if any, named in Exhibit C.

"Guaranty" means a continuing guaranty of the Obligation executed by Guarantor, in form and substance satisfactory to Administrative Agent, as same may be amended, modified, restated, ratified, supplemented or replaced from time to time.

"Improvements" means the Improvements identified in Exhibit C and more particularly described in the Plans, and any items, related to the construction, installation, equipping or decoration of the Improvements, required by any lease but not covered by the Plans.

"Indemnified Taxes" means Taxes imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document, other than Excluded Taxes and Other Taxes.

"Inspecting Person" means person or persons, whether one or more, designated by Administrative Agent from time to time, who may inspect the Improvements from time to time for the benefit of Administrative Agent.

"Joint Fee Letter" has the meaning set forth in Section 2.11 of this Agreement.

"Land" means the real estate described in Exhibit A.

"Lenders" means, collectively, the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns. Unless otherwise specified, the term "Lenders" includes BOKF, NA dba Bank of Texas and Woodforest National Bank in their capacity as a Lender.

"Lending Installation" means, with respect to a Lender or Administrative Agent, the office, branch, Subsidiary or Affiliate of such Lender or Administrative Agent listed on the signature pages hereof or otherwise selected by such Lender or Administrative Agent pursuant to Section 2.12.

"Loan" or "Loans" means the Loan described in Section 2.02.

"Loan Documents" means this Agreement, the Notes, the Guaranty, the Deed of Trusts, the Security Agreement, the Swap Agreements, if any, and such other documents, instruments and agreements evidencing, securing or pertaining to the Loan as shall from time to time be executed and delivered to Lenders by Borrower, Guarantor or any other party pursuant to this Agreement, including, without limitation, each Affidavit of Borrower, each Application for Advance, and the Approved Budget, and any future amendments, restatements, modifications, ratifications, confirmations, extensions or supplements hereto or thereto.

"Managerial Official" means, with respect to any Person, an officer or a governing Person of such Person.

"Margin Stock" has the meaning given thereto in Section 221.3(v) of Regulation U, promulgated by the Board of Governors of the Federal Reserve System, F.R.S. Reg. U., 12 C.F.R. part 221 (January 1, 1983 revision), as amended from time to time.

"Material Adverse Change" means (a) a material adverse change in, or a Material Adverse Change upon, the operations, business, prospects, properties, assets, liabilities (actual or contingent), condition (financial or otherwise) of Borrower or Borrower and its subsidiaries taken as a whole; (b) a material impairment of the ability of any Obligated Party to perform its obligations under any Loan Document to which it is a party; (c) a Material Adverse Change upon the legality, validity, binding effect or enforceability against Borrower or any Obligated Party of any Loan Document to which it is a party or the Rights of Lenders under any Loan Document; or (d) a material restatement or revision of a previously submitted financial statement pursuant to an audit.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-U.S. Lender" means a Lender that is not a United States person as defined in Section 7701(a)(30) of the Code.

"Notes" means the BOKF Note and the Woodforest Note.

"Obligated Party" means any party other than Borrower who secures, guarantees and/or is otherwise obligated to pay all or any portion of the Obligation.

"Obligation" means all present and future indebtedness, obligations and liabilities of Borrower to Lenders arising pursuant to the Loan, this Agreement or any of the other Loan Documents or otherwise, and any renewals, extensions or amendments thereof, or any part thereof, regardless of whether such indebtedness, obligations and liabilities are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several or joint and several, and including interest and fees that accrue after the commencement by or against Borrower of any proceeding under any Applicable Bankruptcy Law naming Borrower as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Outstanding Credit Exposure" means, as to any Lender at any time, an amount equal to its Pro Rata Share of the aggregate principal amount of the Loans outstanding at such time.

"Participant" has the meaning set forth in Section 9.14(a) of this Agreement.

"Participant Register" has the meaning set forth in Section 9.14(c) of this Agreement.

"Permitted Change" means any modification to the Plans, a Construction Contract or both which (i) is not structural in nature; (ii) does not decrease the rentable area of the Improvements or otherwise diminish the revenue generation capabilities of the Improvements; (iii) modifies the aggregate cost of the Property (or causes a reallocation of costs within the



Budget) by less than ten thousand and no/100 dollars (\$10,000) in the singular and less than one hundred thousand and no/100 dollars (\$100,000) in the aggregate with all prior Permitted Changes; (iv) does not cause the Improvements to be in violation of any Governmental Requirements or restrictive covenants applicable to the Property; (v) is described by written notice to Administrative Agent (including a copy of any change order) no later than five (5) days following its implementation; and (vi) has been approved by, to the extent applicable, any tenant as to such part of the Improvements or from whom consent is otherwise required, all sureties under payment or performance bonds, if any, covering such Construction Contract and any required Governmental Authority.

"Person" means any individual, firm, corporation, association, partnership, joint venture, trust, other entity, unincorporated organization or Governmental Authority.

"Plans" means the final working drawings and specifications for the construction of the Improvements (including soil reports and engineering calculations) prepared by Architect and as modified or supplemented from time to time and approved by Administrative Agent, Borrower, any lessee of the Property, if applicable, and, to the extent necessary, by each Governmental Authority.

"Principal Debt" means the aggregate unpaid balance of all Advances of the Loan and all other principal indebtedness, if any, under the Notes at the time in question.

"Property" means the Land, the Improvements and all other property, real and personal, tangible or intangible, now or hereafter subject to a right, lien or security interest to secure the Loan as described herein, in the Construction Deed of Trust or in any of the other Loan Documents.

"Pro Rata Share" means, with respect to a Lender, a portion equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the Aggregate Commitment, provided, however, if all of the Commitments are terminated pursuant to the terms of this Agreement, then "Pro Rata Share" means the percentage obtained by dividing (a) such Lender's Outstanding Credit Exposure at such time by (b) the Aggregate Outstanding Credit Exposure at such time; and provided, further, that when a Defaulting Lender shall exist, "Pro Rata Share" shall mean the percentage of the Aggregate Commitment (disregarding any Defaulting Lender's Commitment) represented by such Lender's Commitment (except that no Lender is required to fund or participate in Loans to the extent that, after giving effect thereto, the aggregate amount of its outstanding Loans would exceed the amount of its Commitment (determined as though no Defaulting Lender existed)).

"Purchasers" has the meaning set forth in Section 9.15(a) of this Agreement.

"Qualified ECP Guarantor" means, in respect of any Swap Obligation, Borrower and Guarantor that is not an individual/a natural person and that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Register" has the meaning set forth in Section 9.15(d) of this Agreement.

"Required Lenders" means those Lenders in the aggregate having greater than sixty-six and sixty-seventh one-hundredths of one percent (66.67%) of the Aggregate Commitment or, if the Aggregate Commitment has been terminated, Lenders in the aggregate holding greater than sixty-six and sixty-seventh one-hundredths of one percent (66.67%) of the Aggregate Outstanding Credit Exposure. The Commitments and Outstanding Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time, and no Defaulting Lender shall be a Required Lender.

"Rights" means rights, remedies, powers and privileges.

"Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States, including transition rules, and, in each case, any amendments to such regulations.

"Sanctioned Entity" means, at any time, (a) any entity listed in any Sanctions-related list of designated entity maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any entity operating, organized or resident in a Sanctioned country or (c) any entity controlled by any such entity.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned country or (c) any Person controlled by any such Person.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

"Security Agreement" means the security agreement whether contained in the Deed of Trusts, or in a separate document, securing the payment and performance of the Obligation, covering as collateral the personal property (including money), tangible and intangible, used or useful in connection with, or arising out of any part of, the Property and any additional collateral specified in Exhibit B and the proceeds of the collateral, as same may be amended, modified, ratified, supplemented, restated or replaced from time to time.

"Specified Swap Agreement" means any Swap Agreement in respect of interest rates, currency exchange rates, commodities, weather, power or emissions entered into by Borrower or any Guarantor and any Person that is a Lender or an affiliate of a Lender at the time such Swap Agreement is entered into (or, in respect of any Swap Agreement entered into prior to the Closing Date, any Person that is a Lender or any affiliate of a Lender on the Closing Date), which has been designated

as a "Specified Swap Agreement" by such Lender and Borrower, by notice to Administrative Agent not later than 15 days after the later of (i) the Closing Date and (ii) the execution and delivery by Borrower or such Guarantor of such Swap Agreement (or such later date agreed by Administrative Agent and Borrower, but in no event more than 30 days after such later date referred to above); provided that for purposes of determining any Guarantee Obligations of any Guarantor pursuant to any Security Agreement, the definition of "Specified Swap Agreement" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, if applicable) any Excluded Swap Obligation of such Guarantor.

"Survey" means a survey of the Land in form and substance satisfactory to Administrative Agent and sufficient to cause the Title Company to delete the "survey exception" in Schedule B of the loan policy of title insurance to the extent permitted by the rules of the Texas Department of Insurance.

"Swap Agreement" means, any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act, including any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or any of its Subsidiaries shall be a "Swap Agreement".

"Swap Obligations" means with respect to any Person, any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction.

"Taxes" means any and all present or future taxes, duties, levies, imposts, deductions, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

"Title Company" means the title company or title companies named in Exhibit C.

"Title Policy" means a loan policy of title insurance (or policies), and any reinsurance agreement (or agreements) issued by the Title Company in form and substance satisfactory to Administrative Agent.

"Transferee" has the meaning set forth in Section 9.15(e) of this Agreement.

"Undisclosed Administration" means, in relation to a Lender the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender is

subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"Woodforest Note" means the Promissory Note made by Borrower payable to the order of Woodforest National Bank in the maximum amount of and evidencing its Commitment and any renewals, extensions, modifications, refinancing, consolidations and substitutions thereof.

1.02 Headings. The headings, captions, and arrangements used in any of the Loan Documents are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify, or modify the terms of the Loan Documents nor to affect the meaning thereof.

1.03 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate. Reference herein to Borrower or to Guarantor shall mean, jointly and severally, each Person comprising same.

1.04 Money. Unless stipulated otherwise, all references herein or in any of the Loan Documents to "Dollars," "money," "payments," or other similar financial or monetary terms are references to currency of the United States of America.

1.05 Articles, Sections and Exhibits. All references herein to Articles and Sections are, unless specified otherwise, references to articles and sections of this Agreement. All references herein to an "Exhibit," "Annex" or "Schedule" are references to exhibits, annexes or schedules attached hereto, all of which are made a part hereof for all purposes, the same as if set forth herein verbatim, it being understood that if any exhibit, annex or schedule attached hereto, which is to be executed and delivered, contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein prior to or at the time of the execution and delivery thereof. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section.

1.06 Accounting Terms. Unless otherwise specified, all accounting and financial terms and covenants set forth above are to be determined according to GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either Borrower or Administrative Agent will so request, Administrative Agent and Borrower will negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Administrative Agent), provided that, until so amended, (a) such ratio or requirement will continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower will provide to Administrative Agent financial statements and other documents required under this Loan Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

## Article II

### Commitment to Lend; Advances

2.01 General. No Lender shall be obligated to make any Advance if, after giving effect to such Advance, the sum of such Lender's Pro Rata Share of the aggregate Advances then outstanding would exceed such Lender's Commitment. All Advances made by a Lender shall be evidenced by a note in the amount of such Lender's Commitment. Each Lender shall enter in its records the amount of each of its Advances, the rate of interest borne on such Advances and the payments of the principal balance received by such Lender, and such records shall be conclusive evidence of the subject matter thereof, absent manifest error

#### 2.02 Loans.

(a) Amount of Loans. Upon the satisfaction of the conditions precedent set forth in this Agreement to the making of Advances, Lenders will, on the terms and conditions set forth in this Agreement, make Advances to Borrower from time to time in an aggregate principal amount not to exceed the Aggregate Commitment. An amount repaid may not be reborrowed.

(b) Making Advances. Promptly after receipt of a request for an Advance from Borrower pursuant to Section 2.03, Administrative Agent will notify each Lender of the contents of such request. Not later than 12:00 noon (central time) on the applicable borrowing date (which must be a Business Day), each Lender shall make available such Lender's Pro Rata Share of any Advance being made, in funds immediately available, to Administrative Agent by wire transfer (pursuant to Administrative Agent's written wire transfer instructions). Administrative Agent will promptly make the funds so received from Lenders available to Borrower on the borrowing date at Administrative Agent's aforesaid address. Lenders shall not be required to make Advances more frequently than specified in Exhibit C. Each Application for Advance shall be submitted by Borrower to Administrative Agent not less than ten Business Days prior to the borrowing date of the Advance.

(c) Interest and Repayment. Interest on any Advance hereunder shall accrue at the rate as set forth in the applicable Note (the "*Interest Rate*"). All Advances and interest thereon shall be paid by Borrower in the manner set forth in the applicable Note and in this Agreement. Borrower hereby directs and authorizes Administrative Agent to disburse interest to Lenders from the line item in the Approved Budget allocated therefor on the date interest is due under the terms of the Notes; provided, however, that: (i) Administrative Agent shall give Borrower prompt notice of each such disbursement (provided, however, failure to give such notice shall not invalidate any such disbursement); and (ii) if on any date interest is due there shall be insufficient funds allocated to interest in the Approved Budget, as determined by Administrative Agent in its sole discretion, then Borrower shall pay interest due from a source other than Loan Proceeds. The entire principal balance of the Notes and all accrued and unpaid interest thereon shall be due, if not sooner paid, on the Maturity Date (as the same may be extended).

(d) Prepayment. The unpaid principal balance of any Note and accrued interest thereon may be prepaid in full or in part, without premium or penalty, on any interest payment date after

at least three (3) Business Days' prior written notice from Borrower to Administrative Agent of the date of prepayment. Administrative Agent will promptly notify each Lender of the contents of any such notice received by it. Any partial prepayment shall be applied by Administrative Agent to the Notes in accordance with the Pro Rata Shares of Lenders. In the event that Borrower shall fail to provide such three (3) Business Days' notice when required herein, Administrative Agent will charge, and Borrower shall pay, additional interest on the amount prepaid, at the applicable Interest Rate or the Default Rate whichever is applicable, through the date three (3) Business Days after the date of prepayment. No Lender shall be obligated hereunder or under any of the other Loan Documents to re-advance to Borrower any sums prepaid by Borrower, whether prepaid voluntarily or involuntarily. Administrative Agent shall give prompt notice to each Lender of any notice received by Administrative Agent pursuant to this Section 2.02(d). All voluntary prepayments pursuant to this Section 2.02(d) shall be applied to scheduled principal installments of the Loans in inverse order of maturity.

(e) Method of Payment. All payments of the Obligations under this Agreement and the other Loan Documents shall be made, without setoff, deduction, or counterclaim, by wire transfer (pursuant to Administrative Agent's written wire transfer instructions) (or direct debit of Borrower's operating account with Administrative Agent) of immediately available funds delivered to Administrative Agent, or at any other Lending Installation of Administrative Agent specified in writing by Administrative Agent to Borrower, by 12:00 noon (central time) on the date when due and shall (except as otherwise specifically required hereunder) be applied ratably by Administrative Agent among Lenders. Each payment delivered to Administrative Agent for the account of any Lender shall be delivered promptly by Administrative Agent to such Lender in the same type of funds that Administrative Agent received at its address specified hereunder or at any Lending Installation specified in a notice received by Administrative Agent from such Lender. Administrative Agent is hereby authorized to charge the account of Borrower maintained with Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder; provided, however, Administrative Agent shall give Borrower prompt notice of each such charge (provided, however, failure to give such notice shall not invalidate any such charge).

2.03 Advances. Prior to any Advances Borrower will provide Lenders with evidence that Borrower have expended at least \$6,059,999 in upfront equity on the Land, Property or the Improvements. Subsequent Advances for construction of the Improvements shall be made only for costs and expenses specified in the Approved Budget, and then only for work performed, services rendered or materials furnished; no Advance shall be made for advance or unearned payments. Advances for payment of costs of construction of the Improvements shall be made only after actual commencement of construction of the Improvements and shall not exceed the aggregate of (a) the costs of labor, materials and services incorporated into the Improvements in a manner acceptable to Administrative Agent, plus (b) if approved by Administrative Agent, the purchase price of all uninstalled materials to be utilized in the construction of the Improvements stored on the Property, or elsewhere with the written consent of and in a manner acceptable to Administrative Agent, less (c) retainage, if any, specified in Exhibit C, and less (d) all prior Advances for payment of costs of labor, materials and services for the construction of the Improvements. Without limitation of other conditions applicable thereto, the final Advance, including all retainage, will not be made until Administrative Agent has received the following: (1) evidence that an Affidavit of Completion was recorded in the real property records of the county in which the Land is located, more than 40 days

prior to the date on which the final Advance will be made (2) a completion certificate from the Inspecting Person, if any, (3) evidence that all Governmental Requirements have been satisfied, including but not limited to, delivery to Administrative Agent of certificates of occupancy permitting the Improvements to be legally occupied, (4) evidence that no mechanic's or materialmen's liens or other encumbrances have been filed and remain in effect against the Property, (5) final lien releases or waivers by Architect, Contractor and all subcontractors, materialmen and other parties who have supplied labor, materials or services for the construction of the Improvements, or who otherwise might be entitled to claim a contractual, statutory or constitutional lien against the Property, and (6) an "as-built" Survey showing that the Improvements as completed do not encroach on any boundary line, easement, building setback line or other restricted area. To the extent that the Improvements are divided into phases or identifiable segments, references in the preceding sentence to a final Advance shall include each final Advance with respect to such a phase or segment. In addition to any other equity or loan to value requirements, Borrower shall have provided evidence reasonably satisfactory to Administrative Agent that Borrower has invested cash equity in the project, as determined by Administrative Agent, of not less than fifteen percent (15%) of the "as completed" appraised value of the Property and Improvements as of the date of funding.

2.04 Conditions to the First Advance. As conditions precedent to the first Advance, Borrower must satisfy the conditions required hereby and execute and deliver to, procure for and deposit with, and pay to Administrative Agent, and if appropriate record in the proper records with all filing and recording fees paid, the documents, certificates, and other items referred to in Exhibit B, together with such other documents, certificates and items as Administrative Agent may require from time to time. Except as otherwise specifically provided herein or agreed in writing by Administrative Agent, all such documents, certificates and other items shall bear a Current Date.

2.05 Conditions to each Advance. As conditions precedent to each Advance for the construction of the Improvements, including the first Advance, in addition to all other requirements herein, Borrower must satisfy the following requirements and, if required by Administrative Agent, deliver to Administrative Agent evidence of such satisfaction:

- (a) All conditions precedent to the first Advance or stated elsewhere herein shall have been satisfied.
- (b) There shall then exist no Event of Default nor shall there have occurred any event which with the giving of notice or the lapse of time, or both, could become an Event of Default.
- (c) The representations and warranties made in this Agreement shall be true and correct on and as of the date of each Advance, and the request for an Advance shall constitute the representation and warranty by Borrower that such representations and warranties are true and correct at such time.
- (d) The Title Policy shall be endorsed and extended, if required by Administrative Agent, to cover each Advance with no additional title exceptions objectionable to Administrative Agent.
- (e) Borrower shall procure and deliver to Administrative Agent, if required by Administrative Agent, releases or waivers of mechanic's liens and receipted bills showing

payment of all amounts due to all parties who have furnished materials or services or performed labor of any kind in connection with the construction of any of the Improvements or otherwise with respect to the Property.

(f) An inspection of and acceptable report on the Improvements by Inspecting Person, at Borrower's sole cost and expense.

(g) A foundation survey, if required by Administrative Agent, shall have been furnished to Administrative Agent within ten (10) days of laying of each foundation of the Improvements showing no encroachment of the Improvements on any boundary line, easement, building setback line or other restricted area.

(h) The sum of the Principal Debt plus the amount of the requested Advance shall not be in excess of the Aggregate Commitment.

2.06 Approved Budget Allocations. Lenders shall not be obligated to make an Advance of an item allocated in the Approved Budget to the extent that the amount of the Advance of such item when added to the amount of prior Advances of such item would exceed the amount allocated to such item in the Approved Budget. Lenders reserves the right to make Advances which are allocated to any of the items in the Approved Budget for such other items therein or in such different proportions as Administrative Agent may, in its sole discretion, deem necessary or advisable. Borrower may not reallocate items of cost in or change the Approved Budget without the prior written consent of Administrative Agent.

2.07 Reserved.

2.08 No Waiver. No Advance shall constitute a waiver of any condition precedent to the obligation of Lenders to make any further Advance or preclude Administrative Agent from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a Default.

2.09 Conditions Precedent for the Benefit of Lenders. All conditions precedent to the obligation of Lenders to make any Advance are imposed hereby solely for the benefit of Lenders, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lenders will refuse to make any Advance in the absence of strict compliance with such conditions precedent. Any requirement of this Agreement may be waived by Administrative Agent, in whole or in part, at any time. Any requirement herein of submission of evidence of the existence or nonexistence of a fact means that the fact shall exist or not exist, as the case may be, and without waiving any condition or any obligation of Borrower, Administrative Agent may at all times independently establish to its satisfaction such existence or nonexistence.

2.10 Subordination. Lenders shall not be obligated to make, and Borrower shall not be entitled to, any Advance until such time as Administrative Agent shall have received, to the extent requested by Administrative Agent, subordination agreements from Architect, Contractor and all other Persons furnishing labor, materials or services for the design or construction of the Improvements, subordinating to the lien of the Deed of Trusts and the Rights of Lenders thereunder any lien, claim or charge they may have against Borrower or the Property.



2.11 Joint Fee Letter. Borrower agrees to pay to Administrative Agent for the account of each Lender the fees set forth in the Joint Fee Letter. No termination of the Loan or reduction of the Loan Amount, and no failure of Borrower to satisfy the conditions set forth in this Agreement or any other Loan Documents, shall entitle Borrower to a refund of any portion of the fees set forth in the Joint Fee Letter.

2.12 Lending Installations. Each Lender may book its Advances at any Lending Installation selected by such Lender, and may change its Lending Installation from time to time. All terms of this Agreement shall apply to any such Lending Installation and the Loans and Notes issued hereunder shall be deemed held by each Lender for the benefit of any such Lending Installation. Each Lender may, by written notice to Administrative Agent and Borrower, designate replacement or additional Lending Installations through which Loans will be made by it and for whose account Loan payments are to be made.

2.13 Non-Receipt of Funds by Administrative Agent. Unless Borrower or a Lender, as the case may be, notifies Administrative Agent prior to the date on which it is scheduled to make payment to Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of Borrower, a payment of principal, interest or fees to Administrative Agent for the account of Lenders, that it does not intend to make such payment, Administrative Agent may assume that such payment has been made. Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or Borrower, as the case may be, has not in fact made such payment to Administrative Agent, the recipient of such payment shall, on demand by Administrative Agent, repay to Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Effective Rate for such day for the first three (3) days and, thereafter, the interest rate applicable to the relevant Loan, or (y) in the case of payment by Borrower, the interest rate applicable to the relevant Loan.

2.14 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender or received by Administrative Agent from a Defaulting Lender pursuant to Section 7.01 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to

Administrative Agent hereunder; *second*, as Borrower may request (so long as no Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by Administrative Agent; *third*, if so determined by Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, if so determined by Administrative Agent, distributed to Lenders other than the Defaulting Lender until the ratio of the Outstanding Credit Exposure of such Lenders to the Aggregate Outstanding Exposure of all Lenders equals such ratio immediately prior to the Defaulting Lender's failure to fund any portion of any Loans; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in this Agreement were satisfied or waived, such payment shall be applied solely to pay the Credit Extensions of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Credit Extensions of such Defaulting Lender until such time as all Loans are held by Lenders pro rata in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by Lenders in accordance with the Commitments, whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.15 Yield Protection. If, after the date of this Agreement, there occurs any adoption of or change in any law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof by any Governmental or quasi-Governmental Authority, central bank or comparable agency charged with the interpretation or

administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives (x) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, in each case of clauses (x) and (y), regardless of the date enacted, adopted, issued, promulgated or implemented, or compliance by any Lender or applicable Lending Installation with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency (any of the foregoing, a “*Change in Law*”) which:

(a) subjects any Lender or any applicable Lending Installation, or Administrative Agent to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, or

(b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation (other than reserves and assessments taken into account in determining the Interest Rate applicable to Advances), or

(c) imposes any other condition (other than Taxes) the result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or maintaining its Loans, or reduces any amount receivable by any Lender or any applicable Lending Installation in connection with its Loans or participations therein, or requires any Lender or any applicable Lending Installation to make any payment calculated by reference to the amount of Loans or participations therein held or interest or fees received by it, by an amount deemed material by such Lender,

and the result of any of the foregoing is to increase the cost to such Person of making or maintaining its Loans or Commitment or to reduce the amount received by such Person in connection with such Loans or Commitment, or participations therein, then, within fifteen (15) days after demand by such Person, Borrower shall pay such Person, as the case may be, such additional amount or amounts as will compensate such Person for such increased cost or reduction in amount received.

**2.16 Changes in Capital Adequacy Regulations.** If a Lender determines that the amount of capital or liquidity required or expected to be maintained by such Lender, any Lending Installation of such Lender, or any corporation or holding company controlling such Lender is increased as a result of (i) a Change in Law, or (ii) any change after the date of this Agreement in the Risk-Based Capital Guidelines, then, within fifteen (15) days of demand by such Lender, Borrower shall pay such Lender the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital or liquidity which such Lender determines is attributable to this Agreement, its Outstanding Credit Exposure or its Commitment to make Loans, as the case may be, hereunder (after taking into account such Lender’s policies as to capital adequacy or liquidity), in each case that is attributable to such Change in Law or change in the Risk-Based Capital Guidelines, as applicable.

#### **2.17 Taxes.**

(a) Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Lender or Administrative Agent receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Borrower shall indemnify the applicable Lender or Administrative Agent, within fifteen (15) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) payable or paid by such Lender or Administrative Agent or required to be withheld or deducted from a payment to such Lender or Administrative Agent and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify Administrative Agent, within fifteen (15) days after demand therefor, for (i) any Indemnified Taxes and Other Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and Other Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.14(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to Lender from any other source against any amount due to Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.17, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such

payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(f)(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a United States Person for U.S. federal income Tax purposes shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such Tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Non-U.S. Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Non-U.S. Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8IMY or IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable.

(C) any Non-U.S. Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Non-U.S. Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-

pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party's obligations under this Section 2.17 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

### **Article III**

#### **Representations and Warranties of Borrower**

Borrower hereby represents and warrants and upon each request for an Advance further represents and warrants as follows:

3.01 Financial Records. The financial statements, information and materials of Borrower heretofore delivered to Administrative Agent have been prepared in accordance with GAAP and fairly and accurately present Borrower's consolidated financial condition (including its assets and liabilities) as of the date or dates thereof, and there have been no Material Adverse Changes in Borrower's financial condition or operations since the date or dates thereof. Borrower currently have no material Guarantee Obligations, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, which are not reflected in the most recent financial statements, information and materials referred to in this section.

3.02 Suits, Actions, Etc. There are no investigations, actions, suits or proceedings pending or to the knowledge of Borrower threatened before or by any Governmental Authority against or affecting Borrower, Guarantor or the Property, or involving the validity, enforceability or priority of any of the Loan Documents. Neither Borrower nor Guarantor is, and the consummation of the transactions contemplated hereby and the performance or satisfaction of any of the terms or conditions hereof and of the other Loan Documents will not cause Borrower or Guarantor to be, in violation of or in default with respect to any Governmental Requirement or in default (or provide cause for acceleration of indebtedness) under any mortgage, deed of trust, lease, promissory note, loan agreement, credit agreement, partnership agreement or other agreement or restriction to which Borrower or Guarantor is a party or by which Borrower or Guarantor or the Property may be bound or affected. Borrower's development of the Land and Improvements and any sale or lease thereof by

Borrower are and shall be exempt from the registration and reporting requirements of the Interstate Land Sales Full Disclosure Act and regulations thereunder as amended from time to time.

3.03 Corporate Existence; Compliance with Law. Borrower (i) is duly organized or formed, as applicable, validly existing and (if relevant) in good standing under the laws of the jurisdiction of its organization, incorporation or formation, as the case may be, (ii) has the limited liability company or corporate power and authority and the legal right, to own and operate its property and assets, to lease the property and assets it leases and causes to be operated as lessee, and to conduct the business in which it is currently engaged under the Governmental Requirements of each jurisdiction in which it owns, leases and/or operates its property or assets, (iii) is duly qualified as a foreign limited liability company or corporation, and (if relevant) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or assets or the conduct of its business requires such qualification, (iv) is in material compliance with its applicable Organizational Documents, and (v) is in compliance with all Governmental Requirements, except to the extent that the failure to comply therewith could not, individually or in the aggregate, reasonably result in a Material Adverse Change.

3.04 Title to the Property. Borrower is the legal and equitable fee simple absolute owner of the Land and all improvements thereon subject only to title exceptions (specified in the Title Policy) which are hereafter accepted by Administrative Agent.

3.05 Commencement of Construction. Prior to the recordation of the Construction Deed of Trust, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the Land) shall have commenced or shall have been performed on the Land, no equipment or material shall have been delivered to or upon the Land for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials, or services for the construction of the Improvements shall have been executed or recorded in any mechanic's lien or other public records.

3.06 Purpose of Loan. The proceeds of the Loan will be used for the purposes specified in the Approved Budget. Such proceeds are not and will not be used directly or indirectly for personal, family, household or agricultural purposes or for the purpose of purchasing or carrying any Margin Stock or for the purpose of extending credit to others for the purpose of purchasing or carrying any Margin Stock.

3.07 No Failure to Disclose. No representation or warranty made by Borrower under this Agreement and no document, instrument or certificate furnished, to be furnished or caused or to be caused to be furnished by Borrower or Guarantor to Administrative Agent in anticipation of or pursuant to this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

3.08 Swap Agreements. Borrower hereby represents and warrants to Lenders and covenants that:

- a) the rate, asset, liability or other notional item underlying any Specified Swap Agreement regarding an interest or monetary rate, or foreign exchange swap, entered into or executed in connection with this Agreement is, or is directly related to, a financial term hereof;



b) the aggregate notional amount of all Swap Agreements entered into or executed by Borrower in connection with the financial terms of this Agreement, whether entered into or executed with Borrower or any other individual or entity, will not at any time exceed the aggregate principal amount outstanding hereunder, as such amounts may be determined or calculated contemporaneously from time to time during and throughout the term of this Agreement;

c) each Swap Agreement entered into or executed in connection with the financial terms of this Agreement has been or will be entered into no earlier than ninety (90) days before and no later than one hundred eighty (180) days after the date hereof or of any transfer of principal hereunder;

d) the purpose of any Swap Agreements in respect of any commodity entered into or executed in connection with this Agreement is to hedge commodity price risks incidental to Borrower's business and arising from potential changes in the price of such commodity; and

e) each Swap Agreement entered into or executed in connection with this Agreement mitigates against the risk of repayment hereof and is not for the purpose of speculation.

For purposes of this section, the term (i) "financial term" shall include, without limitation, the duration or term of this Agreement, rate of interest, the currency or currencies in which the Loan is made and its principal amount, and (ii) "transfer of principal" means any draw of principal under this Agreement, any amendment, restructuring, extension or other modification of this Agreement.

3.09 Entity Power; Authorization; Enforceable Obligations. Borrower has the power and authority, and the legal right, to make, deliver and perform the Loan Documents and to borrow hereunder, and has taken all necessary limited liability company, corporate or other action to authorize the execution, delivery and performance of the Loan Documents and to authorize the borrowings on the terms and conditions of this Agreement and the other Loan Documents. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the borrowings hereunder or the execution, delivery, performance, validity or enforceability of this Agreement or any of the other Loan Documents, except consents, authorizations, filings and notices which have been obtained or made and are in full force and effect. Each Loan Document has been duly executed and delivered on behalf of Borrower. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of Borrower, jointly and severally with each other Borrower, enforceable against Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.10 No Legal Bar. The execution, delivery and performance of this Agreement, the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof will not violate any Governmental Requirement or any contractual or other obligation of Borrower and will not result in, or require, the creation or imposition of any lien on Borrower's assets, properties or revenues pursuant to any Governmental Requirement or any such contractual or other obligation

(other than the liens created by the Loan Documents). No Governmental Requirement or contractual or other obligation applicable to Borrower or Borrower's properties or assets could reasonably result in a Material Adverse Change. No performance of a contractual or other obligation by Borrower, either unconditionally or upon the happening of an event, would result in the creation of a lien (other than a permitted lien) on the property, assets or revenues of Borrower.

3.11 Licenses, Permits, Etc. Borrower possess all licenses, permits, consents, approvals, franchises and intellectual property (or otherwise possesses the right to use such intellectual property without violation of the rights of any other Person) which are necessary for Borrower to own and operate the Property and Borrower's other assets and properties, except for those licenses, permits, consents, approvals, franchises and intellectual property the failure of which to possess could not reasonably result in a Material Adverse Change. No Borrower is in violation in any material respect of the terms under which it possesses any such licenses, permits, consents, approvals, franchises and intellectual property or the right to use such licenses, permits, consents, approvals, franchises and intellectual property. To Borrower's knowledge, each Person other than Borrower operating any Property or other mineral interests of Borrower has all necessary permits, licenses, consents and approvals and is in compliance in all material respects with the terms and conditions of all such permits, licenses, consents and approvals, as well as with all other underlying contracts, documents and agreements.

3.12 Refunds. To Borrower's knowledge, no orders of, proceedings pending before, or other requirements of, any Governmental Authority exists which could result in Borrower being required to refund any portion of the proceeds received or to be received from the sale of any hydrocarbons produced from the Property or other mineral interests of Borrower.

3.13 No Change. Since August 31, 2015, there has been no development or event that has had or could reasonably result in a Material Adverse Change.

3.14 Compliance with Laws. Without limitation of any of the representations and warranties set forth in this Article III, Borrower is presently also in compliance in all material respects with all other applicable Governmental Requirements to which Borrower, or any of Borrower's assets or properties, is subject (except where the failure to so comply could not reasonably result in a Material Adverse Change), provided that this warranty is made to Borrower's knowledge with respect to Borrower's assets or properties which are operated or managed by other Persons.

3.15 Contractual Default. No Borrower is in default under or with respect to any of its contractual obligations in any respect that could reasonably result in a Material Adverse Change.

3.16 Litigation. There is no litigation, investigation or proceeding of or before any arbitrator, mediator or any Governmental Authority or, to Borrower's knowledge, threatened by or against Borrower or against any of Borrower's assets, properties or revenues (a) with respect to any of the Loan Documents or any of the transactions contemplated hereby, or (b) that could reasonably result in a Material Adverse Change.

3.17 No Conflicting Agreements. There is no provision of any existing agreement, mortgage, indenture, instrument, document or contract binding on Borrower or affecting any

property or asset of Borrower, which would conflict with or in any way prevent the execution, delivery or carrying out of the terms of this Agreement and the other Loan Documents.

3.18 Insurance. All policies of insurance of any kind or nature of Borrower, including policies of fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, if and as applicable, are in full force and effect as of the date of this Agreement and are of a nature and provide such coverage as is customarily carried by businesses of the size and character of Borrower. No Borrower has been refused insurance for any material coverage for which it has applied or has had any policy of insurance terminated (other than at Borrower's request).

3.19 Taxes. Borrower has timely filed (or caused to be timely filed) all federal, state and other tax returns, reports and statements (collectively, "Tax Returns") that are required to be filed by Borrower with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed; all such Tax Returns are true and correct in all material respects; Borrower has timely paid, prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof, all taxes shown to be due and payable on said Tax Returns or on any assessments made against Borrower or any of Borrower's properties or assets, and all other taxes, fees or other charges imposed on Borrower or any of Borrower's properties or assets by or otherwise due and payable to any Governmental Authority (other than any for which the amount or validity of which are currently being contested in good faith by appropriate proceedings); and no tax Lien has been filed against the property or assets of Borrower, and, to Borrower's knowledge, no claim is being asserted, with respect to any such tax, fee or other charge. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by Borrower (if and to the extent any such withholdings are so required) for all periods in full and complete compliance with the tax, social security, health care and unemployment withholding provisions of applicable Governmental Requirements, and such withholdings (if any) have been timely paid to the respective Governmental Authorities. No Borrower (i) intends to treat the Loans or any other transaction contemplated hereby as being a "reportable transaction" (within the meaning of Treasury Regulation 1.6011-4), and (ii) is aware of any facts or events that would result in such treatment.

3.20 No Default. No Event of Default has occurred and is continuing.

3.21 Adverse Circumstances. Neither the business nor any property or asset of Borrower is presently affected by any fire, explosion, accident, strike, lockout, or other dispute, embargo, act of God, act of public enemy or terrorism, or similar event or circumstance, nor has any other event or circumstance relating to Borrower's business, affairs, properties or assets occurred, any of which could have a Material Adverse Change.

3.22 Accuracy of Information. To Borrower's knowledge, after due inquiry, all factual information furnished to Administrative Agent in connection with this Agreement and the other Loan Documents is and will be true, accurate and complete in all material respects on the date as of which such information is delivered to Administrative Agent and is not and will not be

incomplete by the omission of any material fact necessary to make such information not misleading, provided that, with respect to projected financial information, prospect information, geological and geophysical data and engineering projections, Borrower only represent that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

3.23 Environmental. To Borrower's knowledge, after due inquiry, the conduct of Borrower's business operations and the condition of Borrower's properties or assets owned, operated or managed by Borrower does not, and the condition of Borrower's properties or assets which are operated or managed by others does not, violate any environmental law or any other Governmental Requirement relating primarily to the environment, hazardous materials, or health and safety. No Borrower has received notice of, nor are there presently existing, any judicial, administrative, arbitral or other proceeding (including any notice of violation or alleged violation) under or relating to any environmental law or any environmental permit to which Borrower is, or to Borrower's knowledge, will be, named as a party that is pending or, to Borrower's knowledge, threatened. No Borrower has received any written request for information, or been notified that Borrower is a potentially responsible party under or relating to any environmental law, or with respect to any hazardous materials or matters of environmental concern. No Borrower has entered into or agreed to any consent decree, order, or settlement or other agreement or undertaking, and no Borrower is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral or other forum for dispute resolution, relating to compliance with or liability under any environmental law or any other Governmental Requirement relating primarily to the environment or hazardous materials. No Borrower has assumed or retained, by contract, operation of law or otherwise, any liabilities of any kind, fixed or contingent, known or unknown, under any environmental law or with respect to any hazardous materials or matters of environmental concern. Borrower has made available to Administrative Agent copies of all significant reports, correspondence and other documents in its possession, custody or control regarding compliance by Borrower or other mineral interests of Borrower with or potential liability of Borrower under environmental laws or environmental permits.

3.24 Solvency; Compliance with Financial Covenants. Borrower is, and after giving effect to the incurrence of all Indebtedness and Obligations being incurred in connection herewith will be and will continue to be, solvent. Borrower is, and after giving effect to the incurrence of all Indebtedness and Obligations being incurred in connection herewith will be and will continue to be in compliance with the Debt Service Coverage Ratio in accordance with Section 4.42.

3.25 Margin Regulations; Investment Company Act. No part of the proceeds of any Loans will be used for buying or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U (as defined within the applicable Governmental Requirements promulgated by the applicable Governmental Authorities from time to time) as now and from time to time hereafter in effect or for any purpose that violates the provisions of any Governmental Authority. If requested by Administrative Agent, Borrower will furnish to

Administrative Agent a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, as applicable, referred to in Regulation U.

No Borrower is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. No Borrower is subject to regulation under any Governmental Requirement which limits its ability to incur Indebtedness, other than Regulation X (as defined within the applicable Governmental Requirements promulgated by the applicable Governmental Authorities from time to time).

Borrower and each of its respective Affiliates are in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any (i) Governmental Authority’s officials or employees, (ii) political party, (ii) official of any political party, (iv) candidate for political office, or (v) anyone other Person acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

3.26 OFAC. No Borrower, nor any Affiliate of Borrower: (a) is a Sanctioned Person; (b) owns assets in Sanctioned Entities; or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. None of the proceeds of any Loan will be used or have been used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

3.27 Continuation of Representations and Warranties. All representations and warranties made under this Agreement shall be deemed to be made at and as of the Closing Date and each Advance date, and in all instances shall be true and correct in all material respects and not misleading.

## Article IV

### Covenants and Agreements of Borrower

Borrower hereby covenants and agrees as follows:

#### 4.01 Maintenance of Insurance.

(a) Maintain in full force and effect (i) casualty insurance on all real and personal property included in the Property on an all-risks basis (including the perils of flood and quake) covering the repair and replacement cost of all such Property, (ii) insurance coverage for business interruption and public liability insurance (including products/completed operations liability coverage), in each case of the kinds customarily carried or maintained by Persons of established reputation engaged in similar businesses and in amounts and with deductibles acceptable to Administrative Agent, and (iii) such other insurance coverage in such amounts and with respect to such risks as Administrative Agent may reasonably request. All such insurance shall be provided by financially sound and reputable insurance companies not Affiliates of Borrower and having a minimum A.M. Best rating of A, size category VII. On or prior to the Closing Date, and at all times thereafter, Borrower will cause Administrative Agent

to be named as an additional insured, assignee and loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.01(a) pursuant to endorsements in form and content acceptable to Administrative Agent. Borrower will deliver to Administrative Agent (i) on or before the Closing Date, a certificate from Borrower's insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of Administrative Agent from time to time full information as to the insurance carried, (iii) within five days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, and (iv) immediately, notice of any cancellation or nonrenewal of coverage by Borrower. In the event Borrower fails to provide Administrative Agent with evidence of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrower's expense to protect Administrative Agent's interest in the Property. The coverage purchased by Administrative Agent may, but need not, protect Borrower's interests. Borrower may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrower has obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Property, to the fullest extent provided by law, Borrower will be responsible for the costs of that insurance, including interest and other charges imposed by Administrative Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. Borrower acknowledges that the costs of insurance purchased by Administrative Agent may be more than the cost of insurance that Borrower would be able to obtain on its own.

(b) Not bring or keep any article on the Property, or cause or allow any condition to exist, if the presence of such article or the occurrence of such condition could reasonably cause the invalidation of any insurance required by Section 4.01 or would otherwise be prohibited by the terms thereof.

(c) In the event Borrower fails to provide Administrative Agent with evidence of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrower's expense to protect Administrative Agent's interests in the Property. This insurance may, but need not, protect Borrower's interests. The coverage purchased by Administrative Agent may not pay any claim made by Borrower or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Administrative Agent, but only after providing Administrative Agent with evidence that Borrower has obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Property, to the fullest extent provided by law Borrower will be responsible for the costs of that insurance, including interest and other

charges imposed by Administrative Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Borrower is able to obtain on its own.

(d) All written communications, documents, certificates of insurance or other material relating to insurance sent to Administrative Agent shall be delivered to the following address, with a copy thereof also delivered to Administrative Agent pursuant to the notice provisions contained in Section 4.01:

BOKF, NA  
Attn: Credit Services – Insurance Monitoring  
P.O. Box 271  
Tulsa, OK 74101

(e) In case of Borrower's failure to keep the Property properly insured as required herein, Administrative Agent, after notice to Borrower, at its option may (but shall not be required to) acquire such insurance as required herein at Borrower's sole expense. **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT SPECIFIED HEREIN; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER OR OTHERWISE AS PROVIDED HEREIN; AND (iii) NAME ADMINISTRATIVE AGENT AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS AS PROVIDED HEREIN; (B) SUBJECT TO THE PROVISIONS HEREOF, BORROWER MUST, IF REQUIRED BY ADMINISTRATIVE AGENT, DELIVER TO ADMINISTRATIVE AGENT A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) SUBJECT TO THE PROVISIONS HEREOF, IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN THE FOREGOING SUBPARTS (A) OR (B), ADMINISTRATIVE AGENT MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT BORROWER'S EXPENSE.**

4.02 *Compliance with Governmental Requirements.* Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Property. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Administrative Agent in writing prior to doing so and so long as, in Administrative Agent's sole opinion, Lenders' interests in the Property are not jeopardized. Administrative Agent may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Administrative Agent, to protect Lenders' interest.

4.03 *Construction Contracts.* Borrower shall become party to no contract, including any Construction Contract, for the performance of any work on the Property or for the supplying of any

labor, materials, or services for the construction of the Improvements except upon such terms and with such parties as shall be approved in writing by Administrative Agent. Each Construction Contract shall provide that all liens, claims and charges of Contractor are subordinate to the Construction Deed of Trust and the Rights of Administrative Agent thereunder and shall require all subcontracts to contain a provision subordinating the subcontractors' liens, claims and charges to the Construction Deed of Trust and the Rights of Lenders thereunder.

4.04 Utilities; Access. Borrower shall take all steps necessary to provide that (a) all utility services necessary for the construction of the Improvements and the operation thereof for their intended purposes are available for connection to the Improvements, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities; and (b) either all roads necessary for access to and from the Property have been completed or the necessary rights-of-way therefor have been acquired by the appropriate Governmental Authority or dedicated to the public use and accepted by such Governmental Authority, and all necessary steps have been taken by Borrower and such Governmental Authority to assure the complete construction and installation thereof prior to the Completion Date.

4.05 Construction of the Improvements. The construction of the Improvements shall be prosecuted with diligence and continuity in a good and workmanlike manner and in accordance with sound building and engineering practices, all applicable Governmental Requirements, the Plans, and the requirements of any lease, if applicable. Borrower shall commence construction of the Improvements no later than the Commencement Date and shall not permit cessation of work for a period in excess of ten (10) days, except cessation for not more than thirty (30) days in the aggregate caused by acts of God or other causes not within the control of Borrower, without the prior written consent of Administrative Agent and shall complete construction of the Improvements on or before the Completion Date, free and clear of all liens except the lien of the Construction Deed of Trust.

4.06 Affidavit of Commencement. Borrower, within ten (10) days after construction of the Improvements actually begins, shall file in the real property records of the county in which the Land is situated, an Affidavit of Commencement executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be the date of or prior to the date on which the Construction Deed of Trust was recorded.

4.07 Correction of Defects. Borrower shall correct or cause to be corrected (a) any defect in the Improvements; (b) any material departure in the construction of the Improvements from the Plans, Governmental Requirements or the requirements of any lease, if applicable; or (c) any encroachment by any part of the Improvements or any structure located on the Land on any building line, easement, property line, or restricted area.

4.08 Storage of Materials. Borrower shall cause all materials supplied for, or intended to be utilized in, the construction of the Improvements, but not affixed to or incorporated into the Improvements or the Property, to be stored on the Land or at such other location as may be approved by Administrative Agent in writing, with adequate safeguards, as required by Administrative Agent, to prevent and insure against loss, theft, damage, or commingling with other materials or projects. With respect to materials not stored on the Land, Borrower shall execute and deliver such financing



statements and security agreements as Administrative Agent shall require to evidence and perfect Administrative Agent's security interest therein.

4.09 Inspection. Borrower shall permit employees or agents of Administrative Agent at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Administrative Agent, shall notify such party to permit Administrative Agent free access to such records at all reasonable times and to provide Administrative Agent with copies of any records it may request, all at Borrower's expense.

4.10 Notices by Governmental Authority; Property Damage. Borrower shall timely comply with and promptly furnish to Administrative Agent true and complete copies of any notice or claim by any Governmental Authority pertaining to the Property. Borrower shall promptly notify Administrative Agent of any fire or other Property damage or any notice of taking or eminent domain action or proceeding affecting the Property. Borrower shall maintain the insurance policies required hereunder in full force and effect until the Obligation is fully paid and performed.

4.11 Special Account. Borrower shall maintain a special account with Administrative Agent into which all Advances (but no other funds) and excluding direct disbursements made by Lenders pursuant to this Agreement shall be deposited by Borrower and against which checks shall be drawn only for the payment of (a) costs of labor, materials and services supplied for the construction of the Improvements specified in the Approved Budget; and (b) other costs and expenses incident to the Loan, the Property, and the construction of the Improvements specified in the Approved Budget.

4.12 Application of Advances. Borrower shall disburse all Advances for payment of costs and expenses specified in the Approved Budget and for no other purpose.

4.13 Borrower's Deposit. If from time to time Administrative Agent reasonably determines that the unadvanced portion of the Commitment will be insufficient for payment in full of (a) costs of labor, materials and services required for the construction of the Improvements; (b) other costs and expenses specified in the Approved Budget; and (c) other costs and expenses required to be paid in connection with the construction of the Improvements in accordance with the Plans, any Governmental Requirements, the requirements of any lease, if applicable, then Borrower shall, on request of Administrative Agent, make a Borrower's Deposit with Administrative Agent in an amount determined by Administrative Agent. Administrative Agent may advance all or a portion of Borrower's Deposit prior to any portion of the Loan proceeds. Borrower shall promptly notify Administrative Agent in writing if and when the cost of the construction of the Improvements exceeds, or appears likely to exceed, the amount of the unadvanced portion of the Commitment and the unadvanced portion of any then existing Borrower's Deposit.

4.14 Direct Disbursement and Application by Administrative Agent. Administrative Agent shall have the right, but not the obligation, to disburse and apply directly the proceeds of any Advance to the satisfaction of any of Borrower's obligations hereunder. Any Advance by Administrative Agent

for such purpose, except Borrower's Deposit, shall be part of the Loan and shall be secured by the Loan Documents. Borrower hereby authorizes Administrative Agent to hold, use, disburse and apply the Loan and Borrower's Deposit for payment of costs of construction of the Improvements, expenses incident to the Loan and the Property and the payment or performance of any obligation of Borrower hereunder. Borrower hereby assigns and pledges the proceeds of the Loan and Borrower's Deposit and grants therein a security interest to Administrative Agent for such purposes. Administrative Agent may advance and incur such expenses as Administrative Agent reasonably deems necessary to preserve the Property, and any other security for the Loan, and such expenses shall be secured by the Loan Documents and payable to Administrative Agent upon demand. Administrative Agent may disburse any portion of any Advance at any time, and from time to time, to persons other than Borrower for the purposes specified in this Section irrespective of any other provision hereof, and the amount of Advances to which Borrower shall thereafter be entitled shall be correspondingly reduced.

4.15 Costs and Expenses. Borrower shall pay when due all costs and expenses required by this Agreement, including, without limitation (a) all taxes and assessments applicable to the Property; (b) all fees for filing or recording any Loan Documents; (c) all fees and commissions lawfully due to brokers, salesmen and agents in connection with the Loan, or the Property; (d) all reasonable fees and expenses of counsel to Administrative Agent in connection with the negotiation, preparation, interpretation, amendment or enforcement of any of the Loan Documents, the making of any Advance, or any suit to which Lenders is a party involving this Agreement or the Property; (e) all title insurance and title examination charges, including premiums for the Title Policy; (f) all survey costs and expenses, including the cost of the Survey; (g) all premiums for the insurance policies as required hereunder; and (h) all other reasonable costs and expenses payable to third parties incurred by Administrative Agent in connection with the consummation of the transactions contemplated by this Agreement.

4.16 Additional Assurances. Borrower shall make, execute and deliver to Lenders such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lenders or their attorneys may reasonably request to evidence and secure the Loans and to perfect all security interests herein.

4.17 Financial Statements; Inspection of Books and Records. Until (i) the Notes and all other obligations and liabilities of Borrower under this Loan Agreement and the other Loan Documents are fully paid and satisfied, and (ii) Lenders has no further commitment to lend hereunder, Borrower will, unless Administrative Agent shall otherwise consent in writing, furnish to Administrative Agent:

(a) Annual Financial Statements. As soon as available and in any event within 90 days after the end of each fiscal year of Borrower, a consolidated and consolidating balance sheet and related statements with detailed footnotes of income or operations and cash flows of Borrower and its subsidiaries as of the end of such fiscal year, in each case audited by independent public accountants of recognized standing satisfactory to Administrative Agent, accompanied by a report and opinion of such accountants, which report and opinion shall be prepared in accordance with GAAP and shall not be subject to any "going concern," "emphasis on going concern," or like qualification or exception, or any qualification or exception as to the scope of such audit. Borrower (i) shall inform such

independent public accountants that Administrative Agent will rely on the results of such financial statements and any other financial statements provided to Administrative Agent and (ii) grants Administrative Agent permission to discuss with such accountants the results of any audit, the field work undertaken, the Loans and any other matters related to Borrower, any subsidiary and any Guarantor.

(b) Interim Financial Statements. As soon as available, and in any event within 45 days after the end of each fiscal quarter of each fiscal year of Borrower, a consolidated and consolidating balance sheet and income statement, and statement of contingent liabilities of Borrower and its subsidiaries as of the end of such fiscal quarter, all in form and substance and in reasonable detail satisfactory to Administrative Agent and duly certified (subject to year-end review adjustments) by a Managerial Official of Borrower (i) as being true and correct in all material aspects to the best of his or her knowledge and (ii) as having been prepared in accordance with GAAP.

(c) Compliance Certificate. A certificate in form acceptable to Administrative Agent signed by a Managerial Official of Borrower, within 45 days after the end of each fiscal quarter of each fiscal year of Borrower, stating that Borrower is in full compliance with all of its obligations under this Loan Agreement and all other Loan Documents and is not in Default of any term or provisions hereof or thereof, and demonstrating compliance with Article VIII and substantially in the form attached hereto as Exhibit E.

(d) Budget. As soon as available and in any event within 45 days after the end of each fiscal year of Borrower, Borrower's operating budget for the new fiscal year.

(e) Waitlist. As soon as available and in any event within 30 days after the end of each fiscal quarter of each fiscal year of Borrower, Borrower's current quarterly waitlist.

In each instance (i) the Financial Statements shall be accompanied by the certification of the president or principal financial officer of Borrower or Guarantor, as the case may be, that such Financial Statements and other reports were prepared in accordance with GAAP and present fairly the financial condition and results of operation of Borrower or of Guarantor, as the case may be; and (ii) if such Financial Statements are independently audited, they shall be accompanied by the opinion of the firm of independent certified public accountants then engaged by Borrower or Guarantor, as the case may be, based on an audit using GAAP, that such Financial Statements were prepared in accordance with GAAP and present fairly the financial condition and results of operations of Borrower and Guarantor, as the case may be. Borrower shall maintain complete and proper books, records and accounts and permit Administrative Agent, at all reasonable times, to examine and copy the books and records of Borrower pertaining to the Loan and the Property, and all contracts, statements, invoices, bills, and claims for labor, materials and services supplied for the construction of the Improvements.

4.18 No Liability of Lenders. Administrative Agent and Lenders shall have no liability, obligation or responsibility with respect to the construction of the Improvements except to advance the Loan and Borrower's Deposit pursuant to this Agreement. Administrative Agent and Lenders shall not be obligated to inspect the Property or the construction of the Improvements, nor be liable

for the adequacy or content of any Construction Contract, the performance or default of Borrower, Architect, Inspecting Person, Contractor or any other party, or for any failure to construct, complete, protect or insure the Improvements, or for the payment of costs of labor, materials or services supplied for the construction of the Improvements, or for the performance of any obligation of Borrower. Nothing, including without limitation any Advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Administrative Agent and Lenders. Further, Administrative Agent and Lenders shall not have, and has not assumed, and by its execution and acceptance of this Agreement hereby expressly disclaims any liability or responsibility for the payment or performance of any indebtedness or obligation of Borrower or of any Guarantor, and no term or condition hereof, or of any of the Loan Documents, shall be construed otherwise. Borrower hereby expressly acknowledges that no term or condition hereof, or of any of the Loan Documents, shall be construed so as to deem the relationship between Borrower, any Guarantor, and Lenders to be other than that of borrower, guarantor and Lenders, and Borrower shall at all times represent that the relationship between Borrower, any Guarantor, Administrative Agent and Lender is solely that of borrower, guarantor and Lenders. Borrower hereby indemnifies and agrees to hold Administrative Agent and Lenders harmless from and against any liability, loss, cost or expense incurred or suffered by Administrative Agent and Lenders as a result of any assertion or claim of any liability or responsibility of Administrative Agent and Lenders for the payment or performance of any indebtedness or obligation of Borrower or of any Guarantor.

4.19 No Conditional Sale Contracts, Etc. No materials, equipment or fixtures shall be supplied, purchased or installed for the construction or operation of the Improvements pursuant to security agreements, conditional sale contracts, lease agreements or other arrangements or understandings whereby a security interest or title is retained by any party or the right is reserved or accrues to any party to remove or repossess any materials, equipment or fixtures intended to be utilized in the construction or operation of the Improvements.

4.20 Defense of Actions. Administrative Agent may (but shall not be obligated to) commence, appear in or defend any action or proceeding purporting to affect the Loan, the Property or the respective rights and obligations of Administrative Agent or Borrower pursuant to this Agreement. Administrative Agent may (but shall not be obligated to) pay all necessary expenses, including reasonable attorneys fees and expenses incurred in connection with any such proceedings or actions, which Borrower agrees to repay to Administrative Agent upon demand.

4.21 Assignment of Construction Contracts. As additional security for the payment of the Loan, Borrower hereby transfers and assigns to Administrative Agent all of Borrower's rights and interest, but not its obligations, in, under and to each Construction Contract upon the following terms and conditions:

(a) Borrower represents and warrants that the copy of each Construction Contract it will furnish to Administrative Agent is a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

(b) Neither this assignment nor any action by Administrative Agent shall constitute an assumption by Administrative Agent of any obligations under any Construction

Contract, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each Construction Contract. Borrower agrees to indemnify and hold Administrative Agent harmless against and from any loss, cost, liability or expense (including but not limited to, reasonable attorneys' fees) resulting from any failure of Borrower to so perform.

(c) Administrative Agent shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Administrative Agent may at any time determine to be necessary or advisable to cure any default under any Construction Contract or to protect the rights of Borrower or Administrative Agent thereunder. Administrative Agent shall incur no liability if any action so taken by it or in its behalf shall prove to be inadequate or invalid, and Borrower agrees to indemnify and hold Administrative Agent harmless against and from any loss, cost, liability or expense (including but not limited to reasonable attorneys' fees) incurred in connection with any such action.

(d) Borrower hereby irrevocably constitutes and appoints Administrative Agent as Borrower's attorney-in-fact, in Borrower's or Administrative Agent's name, to enforce all rights of Borrower under each Construction Contract.

(e) Prior to the occurrence of a Default, Borrower shall have the right to exercise its rights as owner under each Construction Contract, provided that Borrower shall not cancel or amend any Construction Contract or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Administrative Agent.

(f) This assignment shall inure to the benefit of Administrative Agent and its successors and assigns, any purchaser upon foreclosure of the Construction Deed of Trust, any receiver in possession of the Property and any corporation formed by or on behalf of Administrative Agent which assumes Administrative Agent's rights and obligations under this Agreement.

**4.22 Assignment of Architects Agreements and Plans.** As additional security for the Loan, Borrower hereby transfers and assigns to Administrative Agent all of Borrower's right, title and interest in and to the Architect's Agreement and the Plans and hereby represents and warrants to and agrees with Administrative Agent as follows:

(a) Each Architect's Agreement is furnished or will furnish to Administrative Agent is a true and complete copy thereof, including all amendments thereto, if any, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance. Each schedule of the Plans delivered or to be deliver to Administrative Agent is and shall be a complete and accurate description of the Plans.

(b) Neither this assignment nor any action by Administrative Agent shall constitute an assumption by Administrative Agent of any obligations under any Architect's Agreement, and Borrower shall continue to be liable for all obligations of Borrower thereunder, Borrower hereby agreeing to perform all of its obligations under each

Architect's Agreement. Borrower agrees to indemnify and hold Administrative Agent harmless against and from any loss, cost, liability or expense (including but not limited to, reasonable attorneys' fees) resulting from any failure of Borrower to so perform.

(c) Borrower hereby irrevocably constitutes and appoints Administrative Agent as Borrower's attorney-in-fact, in Borrower's or Administrative Agent's name, to enforce all rights of Borrower under each Architect's Agreement.

(d) Prior to the occurrence of a Default, Borrower shall have the right to exercise its rights as owner under each Architect's Agreement, provided that Borrower shall not cancel or amend any Architect's Agreement or do or suffer to be done any act which would impair the security constituted by this assignment without the prior written consent of Administrative Agent.

(e) The Plans are and shall be complete and adequate for the construction of the Improvements and there have been no modifications thereof except as described in such schedule. The Plans shall not be modified without the prior written consent of Administrative Agent.

(f) Administrative Agent may use the Plans for any purpose relating to the Improvements, including but not limited to inspections of construction and the completion of the Improvements.

(g) Administrative Agent's acceptance of this assignment shall not constitute approval of the Plans by Administrative Agent. Administrative Agent has no liability or obligation in connection with the Plans and no responsibility for the adequacy thereof or for the construction of the Improvements contemplated by the Plans. Administrative Agent has no duty to inspect the Improvements, and if Administrative Agent should inspect the Improvements, Administrative Agent shall have no liability or obligation to Borrower or any other party arising out of such inspection. No such inspection nor any failure by Administrative Agent to make objections after any such inspection shall constitute a representation by Administrative Agent that the Improvements are in accordance with the Plans or any other requirement or constitute a waiver of Administrative Agent's right thereafter to insist that the Improvements be constructed in accordance with the Plans or any other requirement.

(h) This assignment shall inure to the benefit of Administrative Agent and its successors and assigns, any purchaser upon foreclosure of the Construction Deed of Trust, any receiver in possession of the Property and any corporation formed by or on behalf of Administrative Agent which assumes Administrative Agent's rights and obligations under this Agreement.

**4.23 Prohibition on Assignment.** Borrower shall not assign or encumber any interest of Borrower hereunder without the prior written consent of Administrative Agent.

4.24 Payment of Claims. Borrower shall promptly pay or cause to be paid when due all costs and expenses incurred in connection with the Property and the construction of the Improvements, and Borrower shall keep the Property free and clear of any liens, charges or claims other than the lien of the Construction Deed of Trust and other liens, if any, approved in writing by Administrative Agent.

4.25 Restrictions and Annexation. Borrower shall not impose any restrictive covenants or encumbrances upon the Property, execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any city without the prior written consent of Administrative Agent.

4.26 Changes. Other than Permitted Changes Borrower shall not issue any change orders or make any changes to the Plans or the Construction Contracts without the prior written consent of Administrative Agent. No approval by Administrative Agent of any change order shall make Administrative Agent responsible for the adequacy, form or content of any such change order.

4.27 Advertising by Lenders. Borrower agrees that during the term of the Loan, Administrative Agent may erect and maintain on the Land one or more advertising signs indicating that the construction financing for the Property has been provided by Lenders.

4.28 INDEMNIFICATION OF LENDERS. BORROWER HEREBY EXPRESSLY ACKNOWLEDGES AND RECOGNIZES BORROWER'S RESPONSIBILITY FOR AND AGREES TO INDEMNIFY AND HOLD ADMINISTRATIVE AGENT AND LENDERS AND THEIR SUCCESSORS AND ASSIGNS ABSOLUTELY HARMLESS FROM AND AGAINST ALL COSTS, EXPENSES, LIABILITIES, LOSS, DAMAGE OR OBLIGATIONS INCURRED BY OR IMPOSED UPON OR ALLEGED TO BE DUE OF ADMINISTRATIVE AGENT AND LENDERS OR THEIR SUCCESSORS AND ASSIGNS IN CONNECTION WITH THE ASSERTION OF (A) ANY CLAIM FOR BROKERAGE, AGENCY OR FINDER'S FEES OR COMMISSIONS IN CONNECTION WITH THE LOAN, OR THE PROPERTY; OR (B) ANY CLAIM FOR ATTORNEYS', APPRAISAL, TITLE INSURANCE, INSPECTION OR OTHER FEES, COSTS AND EXPENSES INCURRED IN CONNECTION WITH THE NEGOTIATION, CLOSING, ADMINISTRATION, COLLECTION OR REFINANCING OF THE LOAN WHICH ARISE BY, THROUGH OR ON BEHALF OF BORROWER OR ANY GUARANTOR OR ANY AGENT OR REPRESENTATIVE OF ANY OF THEM; OR (C) ANY CLAIM ARISING OUT OF OR OCCURRING BECAUSE OF OR RELATED TO ANY DEFAULT HEREUNDER. WITHOUT LIMITING THE REMEDIES AVAILABLE TO ADMINISTRATIVE AGENT OR LENDERS WITH RESPECT TO THE ENFORCEMENT OF ITS INDEMNIFICATION RIGHTS AS STATED HEREIN OR AS STATED IN ANY OF THE LOAN DOCUMENTS, IN THE EVENT ANY CLAIM OR DEMAND IS MADE OR ANY OTHER FACT COMES TO THE ATTENTION OF ADMINISTRATIVE AGENT OR LENDERS IN CONNECTION WITH, RELATING OR PERTAINING TO, OR ARISING OUT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT WHICH ADMINISTRATIVE AGENT OR LENDERS REASONABLY BELIEVES MIGHT INVOLVE OR LEAD TO SOME LIABILITY OF ADMINISTRATIVE AGENT OR LENDERS, BORROWER SHALL, IMMEDIATELY UPON RECEIPT OF WRITTEN NOTIFICATION OF ANY SUCH CLAIM OR DEMAND, ASSUME IN FULL THE PERSONAL RESPONSIBILITY FOR AND, TO THE EXTENT REQUESTED BY ADMINISTRATIVE AGENT OR LENDERS, THE DEFENSE OF ANY SUCH CLAIM OR DEMAND AND PAY IN CONNECTION THEREWITH ANY LOSS, DAMAGE, DEFICIENCY,

LIABILITY OR OBLIGATION, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS INCURRED IN CONNECTION THEREWITH. IN THE EVENT OF COURT ACTION IN CONNECTION WITH ANY SUCH CLAIM OR DEMAND, BORROWER SHALL ASSUME, TO THE EXTENT REQUESTED BY ADMINISTRATIVE AGENT OR LENDERS, THE RESPONSIBILITY FOR THE DEFENSE OF ANY SUCH ACTION AND SHALL IMMEDIATELY SATISFY AND DISCHARGE ANY FINAL DECREE OR JUDGMENT RENDERED THEREIN. ADMINISTRATIVE AGENT OR LENDERS MAY, IN ITS SOLE AND UNCONTROLLED DISCRETION, MAKE ANY PAYMENTS SUSTAINED OR INCURRED BY REASON OF ANY OF THE FOREGOING, AND BORROWER SHALL IMMEDIATELY REPAY TO ADMINISTRATIVE AGENT OR LENDERS IN CASH THE AMOUNT OF SUCH PAYMENT, WITH INTEREST THEREON AT THE RATE SPECIFIED IN THE NOTES TO BE APPLICABLE TO PAST-DUE PRINCIPAL. ADMINISTRATIVE AGENT OR LENDERS SHALL HAVE THE RIGHT TO JOIN BORROWER AS A PARTY DEFENDANT IN ANY LEGAL ACTION BROUGHT AGAINST ADMINISTRATIVE AGENT OR LENDERS, AND BORROWER HEREBY CONSENTS TO THE ENTRY OF AN ORDER MAKING BORROWER A PARTY DEFENDANT TO ANY SUCH ACTION.

4.29 Funding Indemnification. If (a) any payment of a Loan occurs on a date which is not a regularly scheduled interest or principal payment pursuant to the terms of the applicable Note, whether because of acceleration, prepayment or otherwise, (b) an Advance is not made on the date specified by Borrower for any reason other than default by Lenders, or (c) Borrower fails to borrow or prepay any Loan on the date specified in any notice delivered pursuant hereto, Borrower will indemnify each Lender for such Lender's costs, expenses and Interest Differential (as determined by such Lender) incurred as a result of such occurrence. The term "Interest Differential" shall mean that sum equal to the greater of zero or the financial loss incurred by Lender resulting an occurrence of an event described in the first sentence of this Section 4.29, calculated as the difference between the amount of interest such Lender would have earned (from the investments in money markets as of the date of such occurrence) had such occurrence not occurred and the interest such Lender will actually earn (from like investments in money markets as of the date of prepayment) as a result of the redeployment of funds from such occurrence.

4.30 Tax Receipts. Borrower shall furnish to Administrative Agent receipts or tax statements marked "paid" to evidence the payment of all taxes levied on the Property on or before thirty (30) days prior to the date on which such taxes become delinquent.

4.31 Incumbency. Borrower shall from time to time, at the request of Administrative Agent, certify to Administrative Agent the names, signatures and positions of all persons authorized to execute and deliver any of the Loan Documents.

4.32 Bankruptcy Proceedings. Borrower shall notify Administrative Agent immediately of the filing of any petition, case, proceeding or other action against Borrower or Guarantor or any of the Property under any Applicable Bankruptcy Law. Borrower agrees that any transfer, encumbrance or other use of any security (or any proceeds of such security) for the Loan after the filing of any such petition or other action and without specific written consent of Administrative Agent shall constitute a conversion of Administrative Agent's right, title and interest in said security or the proceeds thereof, as the case may be.



4.33 HVRCE Regulations. Borrower shall at all times cause the Property to remain in full compliance with all required equity thresholds and capital retention obligations set forth in Part 217 of Chapter II of title 12 of the Code of Federal Regulations (HVCRE regulations) such that the Property would not, in the determination of Administrative Agent, need to be classified as High Volatility Commercial Real Estate.

4.34 Notices of Claims and Litigation. Borrower shall promptly inform Administrative Agent in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

4.35 Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Administrative Agent immediately in writing of any default in connection with any other such agreements.

4.36 Loan Proceeds. Borrower shall use all Loan proceeds solely for the construction of improvements to the Property, unless specifically consented to the contrary by Administrative Agent in writing.

4.37 Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

4.38 Performance. Borrower shall perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Loan Documents, and in all other instruments and agreements between Borrower and Lenders. Borrower shall notify Administrative Agent immediately in writing of any default in connection with any agreement.

4.39 Operations. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Administrative Agent of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

4.40 Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment,

unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Administrative Agent promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

4.41 Negative Covenants. Except as specifically provided for in the Loan Documents or unless Administrative Agent shall otherwise give its prior written consent, Borrower shall not:

(a) Convey, transfer, lease or encumber any of the Land or the Property or any right to manage any of the Property or to receive any rents, profits, proceeds or any insurance thereof.

(b) Following the Completion Date, remodel, add to, reconstruct, improve or demolish any of the Property.

(c) Liquidate, terminate, consolidate, merge or dissolve.

(d) Purchase or acquire any materials, supplies, fixtures or equipment in connection with the construction of the Property under lease or conditional sale or other type of title retention or security agreement.

(e) Create, incur, permit or assume any indebtedness, other than (a) indebtedness to Lenders, (b) indebtedness outstanding on the Closing Date which has been disclosed to and approved by Administrative Agent in writing, and (c) any additional indebtedness which would result in a pro forma Debt Service Coverage Ratio of less than 1.50 to 1.0 as calculated in Section 4.42 and taking into account such new indebtedness. Prior to incurring such additional indebtedness, Administrative Agent shall satisfactorily review and approve a certificate from Borrower demonstrating compliance with the pro forma Debt Service Coverage Ratio.

(f) Create or suffer to be created any lien, encumbrance easement, use or charge affecting any of the Property or the revenues of Borrower, other than as evidenced by the Loan Documents.

(g) Except as otherwise provided herein, and if no Event of Default has occurred and is continuing, Borrower may make distributions of cash or property to its partners or otherwise make distributions on the account of equity interests in Borrower, provided, however, that no such distribution would (a) cause Borrower to be in default of any covenant contained herein or in the Loan Documents, or (b) cause Borrower net equity investment in the Property, as determined by Administrative Agent, to be less than fifteen percent (15%). At such time as (i) no Event of Default has occurred and is continuing; (ii) the construction of the Property is complete, (iii) a certificate of occupancy has been issued, (iv) Borrower has achieved and maintained a Debt Service Coverage Ratio of 1.2 to 1.0 for

two consecutive calendar quarters, and (v) the Loan hereunder then requires amortizing principal payments on a loan with an initial term of 3 years or longer measured from the inception of such amortizing principal payments, then the prohibition on distributions in the preceding sentence shall not apply.

4.42 Debt Service Coverage Ratio. Borrower shall maintain a "Debt Service Coverage Ratio" of not less than 1.20 to 1.0 for each fiscal year, to be measured by Borrower at the end of each fiscal quarter of each fiscal year of Borrower calculated on a trailing four (4) quarter basis and at the time Borrower incurs any new debt. The term "Debt Service Coverage Ratio" is defined as Adjusted Revenue divided by principal and interest payments on all debt to be paid over the next twelve (12) months. "Adjusted Revenues" means change in net assets on the trailing twelve (12) month basis plus to the extent deducted from income (i) depreciation and amortization, (ii) interest expense, (iii) unrealized losses on investments or Swap Obligations, (iv) extraordinary losses minus (v) unrealized gains on investments or Swap Obligations, (vi) extraordinary gains and (vii) unfinanced capital expenditures.

4.43 Debt Service Reserve Fund. Borrower shall maintain, at Administrative Agent, a reserve account with a balance of \$500,000 of Borrower provided funds (the "Reserve Fund"). Borrower hereby grants to Administrative Agent a security interest in the Reserve Fund. Upon the occurrence of an Event of Default and at the sole discretion of Administrative Agent, funds in the Reserve Fund may be used to pay any Obligation that is past due or reduce any outstanding Obligation. Any deductions by Administrative Agent from the Reserve Fund shall be replenished by Borrower within (3) business days. The Reserve Fund shall be released by Administrative Agent two (2) years from the Closing Date.

4.44 Prefunded Capitalized Interest Account. Borrower shall maintain at Administrative Agent a capitalized interest account with a balance of \$1,000,000 of Borrower provided funds (the "Capitalized Interest Fund"). Borrower hereby grants to Administrative Agent a security interest in the Capitalized Interest Fund. Funds in the Capitalized Interest Fund shall be used by Administrative Agent to pay interest on the Loans as such interest becomes due.

4.45 Banking Relationship. During the term of this Agreement, Borrower shall maintain its operating accounts with Administrative Agent. Such accounts must be opened with Administrative Agent no later than the Closing Date. Borrower shall transfer all of its operating account funds no later than ninety (90) days from the Closing Date.

## Article V

### Default

5.01 Default. The term "Event of Default," as used herein, shall include the occurrence of any one or more of the following events:

- (a) the failure, refusal or neglect of Borrower to pay when due any part of the Obligation; or

(b) the failure of Borrower to timely and properly, observe, keep or perform any covenant, agreement, warranty or condition required herein, or in the Notes, or any renewal, modification, rearrangement, amendment or extension thereof, or in any Loan Document (other than covenants to pay any sum of money in accordance with the Obligation); or

(c) any representation, covenant or warranty contained herein, in any of the other Loan Documents or in any other document ever delivered by Borrower to Administrative Agent in connection with the Obligation, is false, misleading, erroneous or breached in any material respect; or

(d) If Borrower: (i) becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors, or admits in writing its inability to or is unable to pay its debts as they become due; (ii) generally is not paying its debts as such debts become due; (iii) has a receiver, trustee or custodian appointed for, or take possession of, all or substantially all of the assets of Borrower, either in a proceeding brought by Borrower or in a proceeding brought against Borrower and such appointment is not discharged or such possession is not terminated within 60 days after the effective date thereof or Borrower consents to or acquiesces in such appointment or possession; (iv) files a petition for relief under the Applicable Bankruptcy Laws or an involuntary petition for relief is filed against Borrower under any Applicable Bankruptcy Law, or an order for relief naming Borrower is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Borrower; (v) fails to have discharged within a period of 30 days any attachment, sequestration or similar writ levied upon any Property of Borrower; or (vi) fails to pay within thirty (30) days any final money judgment against Borrower; or

(e) a levy against the Property or any part thereof or against any material portion of Borrower's other property or any execution, garnishment, attachment, sequestration or other writ or similar proceeding which is not permanently dismissed or discharged within thirty (30) days after such levy; or

(f) abandonment of any portion of the Property or any material portion of any of the other property of Borrower; or

(g) dissolution, liquidation, termination or forfeiture of Borrower's right to do business, or, if Borrower is an individual, the death or disability of Borrower; or

(h) the filing by Borrower of either a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending any of the rights or powers of Beneficiary or Trustee granted in the Notes, herein or in any Loan Document; or

(i) The occurrence of any event referred to in paragraphs (c), (d), (g) or (h) above with respect to any Guarantor (as if such Guarantor were "Borrower" in such Paragraphs); or

(j) A default, or the occurrence of an event which with the lapse of time or the giving of notice, or both, could become a default, under, or the acceleration of any indebtedness secured by, any other mortgage, security interest or assignment which covers or affects any part of the Property (but this provision does not grant or imply consent to any such mortgage, security interest or assignment); or

(k) The failure to commence construction of the Improvements by the Commencement Date or, after commencement of construction of the Improvements, the cessation of the construction of the Improvements for more than ten (10) days without the written consent of Administrative Agent, except cessation for not more than thirty (30) days in the aggregate caused by acts of God or other causes not within the control of Borrower; or

(l) A failure of the construction of any part of the Improvements, or of any of the materials, articles or fixtures supplied for incorporation into the construction of the Improvements, to comply with the Plans, any Governmental Requirement, or the requirements of any lease, if applicable; or

(m) An inability of Borrower to satisfy any condition specified herein as precedent to the obligation of Administrative Agent to make an Advance after an Application for Advance has been submitted by Borrower to Administrative Agent; or

(n) A failure by Borrower to achieve completion of the Improvements by the Completion Date or a determination by Administrative Agent that construction of the Improvements will not be completed on or before the Completion Date; or

(o) Borrower or any Guarantor will have (1) concealed, removed, or permitted to be concealed or removed any part of its property with the intent to hinder, delay or defraud any of its creditors; or (2) made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (3) suffered or permitted while insolvent (under any applicable definition of the term) any creditor to obtain a lien upon any of its property through legal proceedings or distraint which lien is not permanently vacated within thirty (30) days from the date thereof; or

(p) The occurrence of any event or condition which results in, or with notice or lapse of time or both could result in, a default in the payment of any indebtedness or performance of any obligation of Borrower including with respect to any SWAP Obligation to any person or entity other than the Obligations; or

(q) The occurrence of a Material Adverse Change; or

(r) The occurrence of any default under any lease covering any portion of the Property or the repudiation, termination or attempted repudiation or termination of any such lease.

Nothing in this Agreement will be construed to limit events of default enumerated in any of the other Loan Documents and all such events of default will be cumulative.

## Article VI

### **Certain Rights and Remedies of Lenders**

6.01 Certain Remedies. Should an Event of Default occur and be continuing, or if Administrative Agent has accelerated or demanded payment of the Loan pursuant to any of the Loan Documents, Administrative Agent may, at its election, do any one or more of the following:

(a) Declare the Obligation, or any part thereof, immediately due and payable, whereupon it shall be due and payable without notice of any kind, including but not limited to notice of intention to accelerate, all of which are waived by Borrower.

(b) Terminate its commitment to lend and any obligation to disburse Borrower's Deposit hereunder.

(c) Reduce any claim to judgment.

(d) Exercise any and all Rights afforded by any of the Loan Documents, or by law or equity or otherwise, as Administrative Agent shall deem appropriate.

(e) If at any time, in the determination of Administrative Agent, the net equity or capital retention of Borrower would require Administrative Agent to classify the Property as High Volatility Commercial Real Estate, then within ten (10) days after written demand being issued by Administrative Agent, Borrower shall take such actions as may be necessary, including obtaining adequate equity infusion, such that Administrative Agent is satisfied that the Property need not be classified as High Volatility Commercial Real Estate. If Borrower fails to take such action, then, in addition to any other rights and remedies Administrative Agent may have, the interest rate on the Loan shall immediately increase by 0.85 percent as of the 11th day after such notice and demand is issued.

6.02 Performance by Administrative Agent. Should any covenant, duty, or agreement of Borrower fail to be performed in accordance with the terms of the Loan Documents, Administrative Agent may, at its option, perform, or attempt to perform, such covenant, duty or agreement on behalf of Borrower. In such event, Borrower shall pay to Administrative Agent on demand any amount paid or incurred by Administrative Agent in such performance or attempted performance, together with interest thereon at the rate provided in the Notes for past-due payment from the date when paid or incurred by Administrative Agent until paid. Notwithstanding the foregoing, it is expressly understood that Administrative Agent does not assume and shall never have any liability or responsibility for the performance of any duties of Borrower hereunder. Without limiting the generality of the foregoing, upon the occurrence of an Event of Default, Administrative Agent shall have the right, in addition to any other Right of Lenders, but not the obligation, in its own name or in the name of Borrower, to enter into possession of the Property; to perform all work necessary to complete the construction of the Improvements substantially in accordance with the Plans, Governmental Requirements, and the requirements of any lease, if applicable; and to employ watchmen and other safeguards to protect the Property. Borrower hereby appoints Administrative

Agent as the attorney-in-fact of Borrower with full power of substitution, and in the name of Borrower if Administrative Agent elects to do so, upon the occurrence of an Event of Default, to (a) use such sums as are necessary, including any proceeds of the Loan and Borrower's Deposit, make such changes or corrections in the Plans, and employ such architects, engineers and contractors as may be required for the purpose of completing the construction of the Improvements substantially in accordance with the Plans, Governmental Requirements, and the requirements of any lease, if applicable; (b) execute all applications and certificates in the name of Borrower which may be required for the completion of the construction of the Improvements; (c) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies required hereunder, or other checks or instruments payable to Borrower with respect to the Property; (d) do every act with respect to the construction of the Improvements which Borrower may do; and (e) prosecute or defend any action or proceeding incident to the Property. The power-of-attorney granted hereby is a power coupled with an interest, is irrevocable and shall not terminate upon disability of the principal. Administrative Agent shall have no obligation to undertake any of the foregoing actions, and if Administrative Agent should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Administrative Agent. No such payment or performance by Administrative Agent shall constitute a waiver of any such Event of Default.

6.03 Application of Funds. After the exercise of remedies provided for in Section 6.01 (or after the Obligations under this Agreement and the other Loan Documents have automatically become immediately due and payable as set forth in the first sentence of Section 6.01), any amounts received by Administrative Agent on account of the Obligations shall be applied by Administrative Agent in the following order:

(a) First, to payment of fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to Administrative Agent) payable to Administrative Agent in its capacity as such;

(b) Second, to payment of fees, indemnities, expenses and other amounts (other than principal, interest, and commitment fees payable to Lenders) (including fees, charges and disbursements of counsel to the respective Lenders) as required by this Agreement and the other Loan Documents;

(c) Third, to payment of accrued and unpaid commitment fees and interest on the Loans, ratably among Lenders in proportion to the respective amounts payable to them;

(d) Fourth, to payment of all Obligations ratably among Lenders;

(e) Last, the balance, if any, to Borrower or as otherwise required by law.

6.04 Administrative Agent Not in Control. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent the right or power to exercise control over the affairs and/or management of Borrower, the power of Administrative Agent being limited to the rights to exercise the remedies referred to in the other Sections of this Article; provided that if Administrative Agent becomes the owner of any stock of any entity, whether

through foreclosure or otherwise, Administrative Agent shall be entitled to exercise such legal rights as it may have by being a shareholder of such entity.

6.05 Preservation of Rights. No delay or omission of Lenders or Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein, and the making of a Credit Extension notwithstanding the existence of an Event of Default or the inability of Borrower to satisfy the conditions precedent to such Credit Extension shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by Administrative Agent required pursuant to Section 9.04, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to Administrative Agent and Lenders until the Obligations have been paid in full.

6.06 Cumulative Rights. All Rights available to Administrative Agent under the Loan Documents shall be cumulative of and in addition to all other Rights of Lenders at law, in equity or otherwise whether or not the Obligation is due and payable and whether or not Administrative Agent shall have instituted any suit for collection, foreclosure or other action in connection with the Loan Documents.

6.07 Funds of Administrative Agent. Any funds of Administrative Agent used for any purpose referred to in this Article shall constitute Advances secured by the Loan Documents and shall bear interest at the rate specified in the Notes for past-due payments.

## Article VII

### Administrative Agent

7.01 Appointment; Nature of Relationship. BOKF, NA dba Bank of Texas is hereby appointed by each of Lenders as its contractual representative (herein referred to as the “Administrative Agent”) hereunder and under each other Loan Document, and each of Lenders irrevocably authorizes Administrative Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. Administrative Agent agrees to act as such contractual representative upon the express conditions contained in this Article VII. Notwithstanding the use of the defined term “Administrative Agent,” it is expressly understood and agreed that Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that Administrative Agent is merely acting as the contractual representative of Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as Lenders’ contractual representative, Administrative Agent (i) does not hereby assume any fiduciary duties to any of Lenders, and (ii) is a “representative” of Lenders within the meaning of the term “secured party” as defined in the Uniform Commercial Code of the State, and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly



set forth in this Agreement and the other Loan Documents. Each of Lenders hereby agrees to assert no claim against Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

7.02 Powers. Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. Administrative Agent shall have no implied duties to Lenders, or any obligation to Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by Administrative Agent.

7.03 General Immunity. Neither Administrative Agent nor any of its directors, officers, agents or employees shall be liable to Borrower, Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

7.04 No Responsibility for Loans, Recitals, etc. Neither Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in this Agreement, except receipt of items required to be delivered solely to Administrative Agent; (d) the existence or possible existence of any Event of Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any collateral security; or (g) the financial condition of Borrower or any guarantor of any of the Obligations or of any of Borrower's or any such guarantor's respective Subsidiaries.

7.05 Action on Instructions of Lenders. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of Lenders. Lenders hereby acknowledge that Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

7.06 Employment of Administrative Agents and Counsel. Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document

by or through employees, agents, and attorneys-in-fact and shall not be answerable to Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Administrative Agent shall be entitled to advice of counsel concerning the contractual arrangement between Administrative Agent and Lenders and all matters pertaining to Administrative Agent's duties hereunder and under any other Loan Document.

**7.07 Reliance on Documents; Counsel.** Administrative Agent shall be entitled to rely upon any Notes, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail message, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and, in respect to legal matters, upon the opinion of counsel selected by Administrative Agent, which counsel may be employees of Administrative Agent. For purposes of determining compliance with the conditions specified in this Agreement, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Administrative Agent shall have received notice from such Lender prior to the applicable date specifying its objection thereto.

**7.08 Administrative Agent's Reimbursement and Indemnification.** Lenders agree to reimburse and indemnify Administrative Agent ratably in proportion to their respective Pro Rata Shares (disregarding, for the avoidance of doubt, the exclusion of Defaulting Lenders therein) (i) for any amounts not reimbursed by Borrower for which Administrative Agent is entitled to reimbursement by Borrower under the Loan Documents, (ii) for any other expenses incurred by Administrative Agent on behalf of Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents, and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby, or the enforcement of any of the terms of the Loan Documents or of any such other documents, *provided* that no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Administrative Agent.

**7.09 Notice of Event of Default.** Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default hereunder unless Administrative Agent has received written notice from a Lender or Borrower referring to this Agreement describing such Event of Default and stating that such notice is a "notice of default". In the event that Administrative Agent receives such a notice, Administrative Agent shall give prompt notice thereof to Lenders; *provided* that, except as expressly set forth in the Loan Documents, Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates or subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity.

7.10 Rights as a Lender. In the event Administrative Agent is a Lender, Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Commitment and its Loans as any Lender and may exercise the same as though it were not Administrative Agent, and the term “Lender” or “Lenders” shall, at any time when Administrative Agent is a Lender, unless the context otherwise indicates, include Administrative Agent in its individual capacity. Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with Borrower or any of its Affiliates in which Borrower or such Affiliate is not restricted hereby from engaging with any other Person.

7.11 Lender Credit Decision, Legal Representation.

(a) Each Lender acknowledges that it has, independently and without reliance upon Administrative Agent, the Arranger or any other Lender and based on the financial statements prepared by Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon Administrative Agent, the Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents. Except for any notice, report, document or other information expressly required to be furnished to Lenders by Administrative Agent or Arranger hereunder, neither Administrative Agent nor the Arranger shall have any duty or responsibility (either initially or on a continuing basis) to provide any Lender with any notice, report, document, credit information or other information concerning the affairs, financial condition or business of Borrower or any of its Affiliates that may come into the possession of Administrative Agent or Arranger (whether or not in their respective capacity as Administrative Agent or Arranger) or any of their Affiliates.

(b) Each Lender further acknowledges that it has had the opportunity to be represented by legal counsel in connection with its execution of this Agreement and the other Loan Documents, that it has made its own evaluation of all applicable laws and regulations relating to the transactions contemplated hereby, and that the counsel to Administrative Agent represents only Administrative Agent and not Lenders in connection with this Agreement and the transactions contemplated hereby.

7.12 Successor Administrative Agent. Administrative Agent may resign at any time by giving written notice thereof to Lenders and Borrower, such resignation to be effective upon the appointment of a successor Administrative Agent or, if no successor Administrative Agent has been appointed, thirty (30) days after the retiring Administrative Agent gives notice of its intention to resign. Administrative Agent may be removed at any time that it constitutes a Defaulting Lender by written notice received by Administrative Agent from the Required Lenders, such removal to be effective on the date specified by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint, on behalf of Borrower and Lenders, a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders within fifteen (15) days after the resigning Administrative

Agent's giving notice of its intention to resign, then the resigning Administrative Agent may appoint, on behalf of Borrower and Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, Administrative Agent may at any time without the consent of Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. If Administrative Agent has resigned or been removed and no successor Administrative Agent has been appointed, Lenders shall perform all the duties of Administrative Agent hereunder and Borrower shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with Lenders, provided further, Borrower is entitled to follow instructions and rely upon any notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail, message, statement, paper or document from or on behalf of any Lender informing it that Administrative Agent has resigned or been removed and no successor Administrative Agent has been appointed. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Any such successor Administrative Agent shall be a commercial bank having capital and retained earnings of at least \$100,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent. Upon the effectiveness of the resignation or removal of Administrative Agent, the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Administrative Agent, the provisions of this Article VII shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent hereunder and under the other Loan Documents. In the event that there is a successor to Administrative Agent by merger, or Administrative Agent assigns its duties and obligations to an Affiliate pursuant to this Section 9.02, then the term "LIBOR rate" as used in this Agreement, any Notes or any other Loan Document shall mean an analogous rate of the new Administrative Agent.

7.13 Delegation to Affiliates. Borrower and Lenders agree that Administrative Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which Administrative Agent is entitled hereunder. Borrower is entitled to follow instructions and rely upon any notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail, message, statement, paper or document from any such Person believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons on behalf of Administrative Agent or any of its Affiliates.

7.14 Execution of Loan Documents. Lenders hereby empower and authorize the Administrative Agent to execute and deliver to Borrower on their behalf the Loan Documents and all related financing statements and any financing statements, agreements, documents or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents.

7.15 Collateral Releases. Lenders hereby empower and authorize Administrative Agent to execute and deliver to Borrower on their behalf any agreements, documents or instruments as shall be necessary or appropriate to effect any releases of collateral which shall be permitted by the

terms hereof or of any other Loan Document or which shall otherwise have been approved by all of Lenders in writing.

**7.16 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by Lenders are arm's-length commercial transactions between Borrower, on the one hand, and Lenders and their Affiliates, on the other hand, (B) Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower or any of its Affiliates, or any other Person and (B) no Lender has any obligation to Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) each of Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and no Lender has any obligation to disclose any of such interests to Borrower or its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against each of Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

## **Article VIII**

### **Setoff, Ratable Payments**

**8.01 Setoff.** Borrower hereby grants each Lender a security interest in all deposits, credits and deposit accounts (including all account balances, whether provisional or final and whether or not collected or available) of Borrower with such Lender or any Affiliate of such Lender (the "*Deposits*") to secure the Obligations. In addition to, and without limitation of, any Rights of Lenders under applicable law, if Borrower becomes insolvent, however evidenced, or any Event of Default occurs, Borrower authorizes each Lender to offset and apply all such Deposits toward the payment of the Obligations owing to such Lender, regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to such Lender or Lenders; *provided*, that in the event that any Defaulting Lender shall exercise such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Section 5.02 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent and Borrower a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Borrower shall be given prompt notice of any offset (provided, however, failure to give such notice shall not invalidate any such offset).

8.02 *Ratable Payments.* If any Lender, whether by setoff or otherwise, has payment made to it upon its Outstanding Credit Exposure in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Aggregate Outstanding Credit Exposure held by the other Lenders so that after such purchase each Lender will hold its Pro Rata Share of the Aggregate Outstanding Credit Exposure. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral or other protection ratably in proportion to their respective Pro Rata Shares of the Aggregate Outstanding Credit Exposure. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

## Article IX

### General Terms and Conditions

#### 9.01 *Notices.*

(a) All notices, demands, requests and other communications required or permitted hereunder, or under any other Loan Document except as otherwise provided therein, shall be in writing and shall be deemed to be given and delivered when received, or if earlier and regardless of whether or not actually received (except where actual receipt is specified herein or in any other Loan Document), upon deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage fully prepaid, return receipt requested, addressed to Borrower or Administrative Agent, as the case may be, at its address specified on the first page of this Agreement or at such other address as such party may have specified theretofore by notice delivered in accordance with this Section and actually received by the other party. To the extent actual receipt is required, rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was received shall be deemed to be receipt of the notice, demand, request or other communication.

(b) Borrower and Administrative Agent agree that no notices or other communications by electronic means between such parties or their representatives in connection with this Loan Agreement or any instrument executed in connection herewith shall constitute a transaction, agreement, contract or electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions, unless otherwise specifically agreed to in writing.

9.02 *Continuation and Survival.* All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the date of this Agreement and at and as of all times thereafter. All statements contained in any certificate, financial statement, legal opinion or other instrument delivered by or on behalf of Borrower or Guarantor pursuant to or in connection with any of the Loan Documents shall constitute additional representations and warranties made under this Agreement. All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall survive until payment in

full of all sums owing and performance of all other obligations hereunder by Borrower to Lenders and shall not be waived by the execution and delivery of this Agreement, any Advance hereunder, completion of construction of the Improvements, any investigation by Administrative Agent or Lenders or any other event except a specific written waiver by Administrative Agent or Lenders.

9.03 Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of Borrower, Administrative Agent and Lenders and their respective successors and assigns permitted hereby, except that (i) Borrower shall not have the right to assign its rights or obligations under the Loan Documents without the prior written consent of each Lender, (ii) any assignment by any Lender must be made in compliance with Section 9.15, (iii) any transfer by participation must be made in compliance with Section 9.14, and (iv) any assignment by or successor to Administrative Agent shall be in accordance with Section 9.02. Any attempted assignment or transfer by any party not made in compliance with this Section 9.03 shall be null and void, unless such attempted assignment or transfer is treated as a participation in accordance with the terms of this Agreement. The parties to this Agreement acknowledge that clause (ii) of this Section 9.03 relates only to absolute assignments and this Section 9.03 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a Fund, any pledge or assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee; *provided, however*, that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 9.15. Administrative Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 9.15; *provided, however*, that Administrative Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Loan or which holds any Note to direct payments relating to such Loan or Note to another Person. Any assignee of the rights to any Loan or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Loan.

9.04 Amendments; Waivers. Subject to the provisions of this Section 9.04, the Required Lenders (or Administrative Agent with the consent in writing of the Required Lenders) and Borrower may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to this Agreement, the Guaranty, the Security Instrument or any other Loan Documents, or changing in any manner the Rights of Lenders or Borrower hereunder or thereunder or waiving any Event of Default hereunder; *provided, however*, that no such supplemental agreement shall:

(a) without the consent of each Lender directly affected thereby, extend the final maturity of any Loan or postpone any regularly scheduled payment of principal of any Loan or forgive all or any portion of the principal amount thereof, or reduce the rate or extend the time of payment of interest or fees thereon or increase the amount of the Commitment of such Lender hereunder.

(b) without the consent of all of Lenders, modify the percentage specified in the definition of Required Lenders.

(c) without the consent of all of Lenders, amend this Section 9.04.

(d) without the consent of all of Lenders, release all or substantially all of the Guarantors of the Obligations or, release the collateral securing the Loan.

No amendment of any provision of this Agreement relating to Administrative Agent shall be effective without the written consent of Administrative Agent. Notwithstanding anything to the contrary herein, Administrative Agent may, with the consent of Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency of a technical or immaterial nature, as determined in good faith by Administrative Agent.

Lenders hereby irrevocably authorize Administrative Agent to enter into amendments (collectively, "*Extension Amendments*") to this Agreement and the other Loan Documents as may be necessary in order to effectuate the exercise of an Extension Option, except with respect to the applicable extension of the Maturity Date, not in violation of a Lender's consent rights under Section 9.04. Notwithstanding the foregoing, Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders and, if Administrative Agent seeks such advice or concurrence, Administrative Agent shall be permitted to enter into such amendments with Borrower in accordance with any instructions received from such Required Lenders and shall also be entitled to refrain from entering into such amendments with Borrower unless and until it shall have received such advice or concurrence; *provided, however*, that whether or not there has been a request by Administrative Agent for any such advice or concurrence, all such Extension Amendments entered into with Borrower by Administrative Agent hereunder shall be binding on Lenders. Without limiting the foregoing, in connection with any Extension Option, Borrower shall execute such agreements, confirmations or other documentation as Administrative Agent shall reasonably request.

**9.05 *Invalid Provisions.*** If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

**9.06 *Election of Remedies.*** Administrative Agent shall have all of the Rights granted in the Loan Documents or otherwise and all of those available at law or in equity, and these same Rights shall be cumulative and may be pursued separately, successively or concurrently against Borrower, Guarantor or any property covered under the Loan Documents at the sole discretion of Administrative Agent. The exercise or failure to exercise any of the same shall not constitute a waiver or release thereof or of any other Right, and the same shall be nonexclusive.

**9.07 *Loan Documents.*** All documents, certificates, insurance policies and other items required under this Agreement to be executed or delivered to Administrative Agent must be in form,



scope and substance satisfactory to Administrative Agent. All documents evidencing, guaranteeing, securing or pertaining to the Loan shall be prepared by counsel selected by Administrative Agent.

9.08 Controlling Agreement. The parties hereto intend to conform strictly to the applicable usury laws. In no event, whether by reason of demand for payment or acceleration of the maturity of the Obligation or otherwise, shall the interest contracted for, charged or received by Lenders hereunder or otherwise exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Lenders in excess of the maximum lawful amount, the interest payable to Lenders shall be reduced automatically to the maximum amount permitted under applicable law. If Lenders shall ever receive anything of value deemed interest under applicable law which would apart from this provision be in excess of the maximum lawful amount, an amount equal to any amount which would have been excessive interest shall be applied to the reduction of the principal amount owing on the Obligation in the inverse order of its maturity and not to the payment of interest, or if such amount which would have been excessive interest exceeds the unpaid principal balance of the Obligation, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Lenders shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The provisions of this Section shall control all existing and future agreements between Borrower and Lenders.

9.09 No Third Party Beneficiary. This Agreement is for the sole benefit of Administrative Agent, Lenders and Borrower and is not for the benefit of any third party.

9.10 Administrative Agents' Consent or Approval. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of judgment of Administrative Agent is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Administrative Agent; and (b) deemed to have been given only by a specific writing intended for the purpose and executed by Administrative Agent. Each provision for consent, approval, inspection, review, or verification by Administrative Agent is for Administrative Agent's own purposes and benefit only.

9.11 GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF HARRIS, STATE OF TEXAS AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH

SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

9.12 WAIVER OF JURY TRIAL. EACH OF BORROWER AND LENDER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF BORROWER AND LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF BORROWER AND LENDER WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

9.13 Counterpart Execution. This Loan Agreement may be separately executed in any number of counterparts, each of which will be an original, but all of which, taken together, will be deemed to constitute one and the same instrument. For purposes of negotiating and finalizing this Loan Agreement, if this document or any document executed in connection with it is transmitted by facsimile machine, electronic mail or other electronic transmission, it will be treated for all purposes as an original document. Additionally, the signature of any party on this document transmitted by way of a facsimile machine or electronic mail will be considered for all purposes as an original signature. Any such transmitted document will be considered to have the same binding legal effect as an original document. At the request of any party, any faxed or electronically transmitted document will be re-executed by each signatory party in an original form.

9.14 Participations.

(a) Permitted Participants; Effect. Any Lender may at any time sell to one or more entities ("Participants") participating interests in any Outstanding Credit Exposure owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Outstanding Credit Exposure and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and Borrower and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

(b) Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents *provided* that each such Lender may agree in its participation agreement with its Participant that such Lender will not vote to approve any amendment, modification or waiver with respect to any Outstanding Credit Exposure or Commitment in which such Participant has an interest which would require consent of all of Lenders pursuant to the terms of Section 9.04 or of any other Loan Document.

(c) Benefit of Certain Provisions. Borrower agrees that each Participant shall be deemed to have the right of setoff provided in Section 8.01 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, *provided* that each Lender shall retain the right of setoff provided in Section 8.01 with respect to the amount of participating interests sold to each Participant. Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 8.01, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 8.02 as if each Participant were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in any Outstanding Credit Exposure, any Note, any Commitment or any other obligations under the Loan Documents (the "*Participant Register*"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Outstanding Credit Exposure, any Note, any Commitment or any other obligations under the Loan Documents) to any Person except to the extent that such disclosure is necessary to establish that such Outstanding Credit Exposure, any Note, any Commitment or any other obligations under the Loan Documents is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

#### 9.15 Assignments.

(a) Permitted Assignments. Any Lender may at any time assign to one or more Eligible Assignees ("*Purchasers*") all or any part of its rights and obligations under the Loan Documents. Such assignment shall be substantially in a form reasonably acceptable to Administrative Agent as may be agreed to by the parties thereto. Each such assignment with respect to a Purchaser which is not a Lender or an Affiliate of a Lender or an Approved Fund shall either be in an amount equal to the entire applicable Commitment and Outstanding Credit Exposure of the assigning Lender or (unless each of Borrower and Administrative Agent otherwise consents) be in an aggregate amount not less than \$5,000,000. The amount of the assignment shall be based on the Commitment or Outstanding Credit Exposure (if the Commitment has been terminated) subject to the assignment,

determined as of the date of such assignment or as of the "Trade Date," if the "Trade Date" is specified in the assignment.

(b) Consents. The consent of Administrative Agent shall be required prior to an assignment becoming effective unless the Purchaser is a Lender, an Affiliate of a Lender or an Approved Fund. Any consent required under this Section 9.15(b) shall not be unreasonably withheld or delayed.

(c) Effect; Assignment Effective Date. Upon (i) delivery to Administrative Agent of an assignment, together with any consents required by Sections 9.15(a) and 9.15(b), and (ii) payment of a \$3,500 fee to Administrative Agent for processing such assignment (unless such fee is waived by Administrative Agent), such assignment shall become effective on the effective date specified in such assignment. The assignment shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Commitment and Outstanding Credit Exposure under the applicable assignment agreement constitutes "plan assets" as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be "plan assets" under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the transferor Lender shall be released with respect to the Commitment and Outstanding Credit Exposure assigned to such Purchaser without any further consent or action by Borrower, Lenders or Administrative Agent. In the case of an assignment covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.15 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.14. Upon the consummation of any assignment to a Purchaser pursuant to this Section 9.15(c), the transferor Lender, Administrative Agent and Borrower shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Commitments, as adjusted pursuant to such assignment.

(d) Register. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States of America, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender, pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available

for inspection by Borrower and each Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Dissemination of Information. Borrower authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a “Transferee”) and any prospective Transferee any and all information in such Lender’s possession; *provided* that each Transferee and prospective Transferee agrees to be bound by Section 9.15(e) of this Agreement.

9.16 Loan Agreement Governs. In the event of any conflict between the terms of this Agreement and any terms of any other Loan Document, the terms of this Agreement shall govern. All of the Loan Documents are by this reference incorporated into this Agreement.

9.17 USA Patriot Act Notice. Lenders hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lenders to identify Borrower in accordance with the Act.

9.18 Several Obligations; Benefits of this Agreement. The respective obligations of Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns.

9.19 Time of Essence. Time shall be of the essence in this Agreement.

9.20 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Guarantor to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Guaranty, as it relates to such other Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until discharged in accordance with Section 11.3. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Guarantor for all purposes of Section 1a (18) (A) (v) (II) of the Commodity Exchange Act.

EXECUTED AND DELIVERED to be effective on the date first recited herein.

LENDERS:

**BOKF, NA DBA BANK OF TEXAS,**  
as Administrative Agent

By: [Signature]  
Name: GARY K. WHITE  
Title: SENIOR VICE PRESIDENT

**BOKF, NA DBA BANK OF TEXAS,**  
as Lender

By: [Signature]  
Name: GARY K. WHITE  
Title: SENIOR VICE PRESIDENT

**WOODFOREST NATIONAL BANK,**  
as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER:

**HOUSTON GATEWAY ACADEMY, INC.**

By: [Signature]  
Name: RICHARD GARCIA  
Title: CEO

EXECUTED AND DELIVERED to be effective on the date first recited herein.

LENDERS:


**BOKF, NA DBA BANK OF TEXAS,**  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BOKF, NA DBA BANK OF TEXAS,**  
as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WOODFOREST NATIONAL BANK,**  
as Lender

By:  \_\_\_\_\_  
Name: Stephan Andersen  
Title: SVT

BORROWER:

**HOUSTON GATEWAY ACADEMY, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_